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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

July 9, 2015 - 12:04 p.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

IN RE: SEC Docket No. 2014-04
SITE EVALUATION COMMITTEE:
Site 100 through Site 300
Rulemaking Proceeding.
(Meeting for members to
discuss the proposed rules and
the public comments thereto.)

PRESENT:

SITE EVALUATION COMMITTEE:

Chrmn. Martin P. Honigberg
(Presiding as Chairman of SEC)

Cmsr. Robert R. Scott
Dir. Elizabeth Muzzey
Cmsr. Jeffrey Rose

William Oldenburg
Patricia Weathersby
Roger Hawk

Public Utilities Commission

Public Utilities Commission
DCR-Div. of Historical Res.
Dept. of Resources &
Economic Development
Dept. of Transportation
Public Member
Public Member

Also Present: David K. Wiesner, Esq. (NHPUC)
Michael J. Iacopino, Esq. (Brennan Lenehan..)

COURT REPORTER: *Steven E. Patnaude, LCR No. 52*

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21
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23
24

I N D E X

PAGE NO.

**STATEMENTS/QUESTIONS RE: JUNE 29, 2015
TECHNICAL SESSION BY:**

Mr. Wiesner	7, 9, 10
Chairman Honigberg	8, 9

**STATEMENTS RE: SEC RULEMAKING
PUBLIC COMMENT ISSUES LIST BY:**

Mr. Wiesner	10
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ITEM:	ORDERLY DEVELOPMENT EFFECTS ON MUNICIPALITIES - <i>Site 301.09 and 301.15</i>	11
ITEM:	SITING CRITERIA FORMULATION (Considerations or Findings Based on Record) - <i>Site 301.14 (e)</i>	33
ITEM:	SITE VISITS BY COMMITTEE - <i>Site 202.13</i>	52, 55
ITEM:	PUBLIC INFORMATION SESSIONS - <i>Site 201-01 and 02</i>	52
ITEM:	HISTORICAL RESOURCES EVALUATION - <i>Site 301.06 and 301.14 (b)</i>	58
ITEM:	DEFINITIONS - CUMULATIVE IMPACTS - <i>Site 102.14</i>	76
ITEM:	DEFINITIONS - HISTORIC SITE - <i>Site 102.17</i>	78
ITEM:	DEFINITIONS - LANDSCAPE - <i>Site 102.19</i>	79

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X (continued)

PAGE NO.

ITEM:	CUMULATIVE IMPACTS DEFINITION AND APPLICATION REQUIREMENTS - <i>Site 102.14</i>	87
ITEM:	MONITORING AND ENFORCEMENT PROVISIONS - <i>Site 302</i>	112
ITEM:	BEST PRACTICAL MEASURES (DEFINITION AND REQUIREMENT - <i>Site 102.08 and various application and siting criteria sections</i>	138
ITEM:	ADAPTIVE MANAGEMENT (REQUIRE OR NOT) - <i>Site 102.02 and Site 301.14(e) (7)</i>	152
	Motion by Commissioner Scott to Adjourn	158
	<i>Second by Director Muzzey</i>	158
	<u>Vote on the Motion</u>	158

P R O C E E D I N G

CHAIRMAN HONIGBERG: All right. We're going to get started. We are here to resume discussions of the proposed rules of the Site Evaluation Committee. When last we were together, I think it was -- was it April? It was a long time ago. I want to talk a little bit about scheduling, and tell people the limitations on what we can do, so they understand why it is we're here on July 9th. After the last meeting, we, here at the PUC, we have a scheduling -- it's an online scheduler called "doodle", with a "d" .com. And, we send out dates when we're available, and we ask all the others to identify the dates that they could come. And, the next sentence I'm about to say is true, there was not a single day, from then until July, when we could get a quorum of the SEC together. This is the first day we could get a quorum since the last time we were together. That is an extremely difficult situation, for those of us who are working within the system, to try to function. But, since we are not able to act except when we have a quorum, nothing happens until we get a quorum.

Now, the good news is that the Legislature passed a bill that has attached to it an extension of the rules deadline from July 1 to November 1.

1 We, although I don't believe it's actually been signed
2 into law, when last I checked, it's gone through every
3 other step of the process. With that having happened, we
4 submitted a letter to the Joint Legislative Committee on
5 Administrative Rules requesting a waiver of their
6 deadlines. Because we had started a rulemaking process,
7 that triggers obligations under a different provision of
8 state law. And, we got the letter today that JLCAR waived
9 their requirements. So, we are now operating in
10 conformance with the Joint Legislative Committee on
11 Administrative Rules' requirements as to how we go.

12 We have today. We have dates reserved
13 in August, August 18th. And, I don't remember whether
14 this is morning or afternoon. But I know we have time on
15 August 18th, August 25th, and August 27th. So, from now
16 through those dates, ideally, one of the earlier of those
17 dates, we will try to get through and have a new version
18 of the rules.

19 We will then try to have a public
20 hearing in September, probably, with an eye toward making
21 whatever changes need to be made so that they can be filed
22 at the end of September, basically, to get on the JLCAR
23 agenda for the middle of October. So, that's what we're
24 looking at going forward.

1 A couple of other housekeeping items,
2 things that happened since last we were together. House
3 Bill 614 has within it the SEC Funding Plan, which had a
4 life of its own last year, was in different legislation,
5 but ended up being put into House Bill 614. It provides
6 for filing fees for various kinds of proceedings before
7 the SEC. But as -- and, actually, that became law
8 yesterday afternoon, I believe. It was signed yesterday
9 afternoon, and, under its own terms, became effective when
10 it was signed.

11 The last topic we talked about the last
12 time we were here was the conduct of the public I think
13 they're called "hearings" in the statute, that Applicant's
14 have in the counties that are affected by whatever
15 projects they're proposing. And, there has been some
16 language changed in House Bill 614. And, it's in the
17 description of what's to take place at one of those
18 sessions. And, I'll read the sentence as it will now read
19 under the new provision: "At such session, the applicant
20 shall present information regarding the project and
21 provide an opportunity for comments and questions from the
22 public to be addressed by the applicant." The new
23 language there is "provide an opportunity for questions",
24 and then the phrase "to be addressed by the applicant".

1 And, I know there was a lot of discussion about that.
2 And, when we were last together, we talked about putting
3 into the rules something about "responding" to questions
4 that are posed at those events. So, that seemed like a
5 logical place to start, since it's where we left off.

6 In light of the statutory change, it
7 seems appropriate to make a change to that provision of
8 the rules to pick up that language. So, unless there's
9 someone who feels differently about that, I think we'll
10 close the loop on that issue and move on to whatever the
11 next issue is, and I don't even remember what that is.

12 Mr. Wiesner, can you help me out? What
13 is the next thing? Should we talk about what happened at
14 the technical session, perhaps?

15 MR. WIESNER: We could do that, yes. At
16 the last SEC meeting on the rules in April, April 15th, I
17 believe, there were several items that were identified by
18 the Committee as perhaps being appropriate for an
19 additional technical session that would involve
20 stakeholder participation. And, that session was held on
21 June 29th. And, I filed a memo addressed to the Chairman,
22 which was posted online, which summarizes that session.

23 We spent about four hours in this room,
24 with a diverse group of different stakeholder interests,

1 discussing primarily wind energy siting issues, again,
2 which had been noted by the Committee in that meeting as
3 perhaps appropriate for a further discussion among
4 stakeholders to see if consensus could be developed.

5 And, I will say that we had a very
6 vigorous and wide-ranging and detailed discussion of wind
7 energy project setbacks, and also shadow flicker,
8 application requirements, and study and -- study standards
9 and siting criteria. There was no consensus reached among
10 the broader group as to those points.

11 But there was a consensus reached with
12 respect to some of the sound siting criteria. And, that's
13 summarized in the memo that I filed, which I hope that the
14 members have had a chance to review. And, that may be --
15 it's an issue that we covered to some level of detail in
16 the April 15th meeting, but it may be an appropriate -- it
17 may be appropriate for the Committee members to address
18 those issues here and provide some direction as to whether
19 the rules should be revised in accordance with that
20 stakeholder consensus.

21 CHAIRMAN HONIGBERG: Have people had a
22 chance to review the memo that Mr. Wiesner submitted
23 that's dated July 7th, 2015?

24 (Multiple members nodding in the

1 affirmative.)

2 CHAIRMAN HONIGBERG: I'm seeing nodding
3 of heads up here.

4 I'm inclined to agree with Mr. Wiesner,
5 that the changes that the group that met that day agreed
6 to, make sense for us to adopt as well. Is that the
7 consensus of the group?

8 MS. WEATHERSBY: Yes.

9 CHAIRMAN HONIGBERG: And, I love seeing
10 nodding heads. As long as it doesn't mean eyes are
11 closing when the heads are nodding, that's a good thing.

12 But I got the sense, Mr. Wiesner, and I
13 think you said, that the other issues there was no
14 agreement at the technical session.

15 MR. WIESNER: Right. Nothing I would
16 characterize as an "agreement" that could be reflected in
17 rules changes to be considered by the Committee. And,
18 that's sort of the gist of my report. So, it was a
19 worthwhile session, and it was -- I think everyone made a
20 good faith attempt to try to find that consensus. But, at
21 the end of the day, there was no agreement as to specific
22 rules language changes that could be adopted.

23 CHAIRMAN HONIGBERG: Is it fair to say
24 that there are -- that there are two positions being

1 articulated, and that, ultimately, the Committee is going
2 to have to just pick one? Is that where we are? Or, is
3 there going to be some middle ground one could identify
4 that may be equally wrong from both sides' perspective,
5 but --

6 MR. WIESNER: It would be hard to say.
7 I mean, there's one view that the rules, as proposed, are
8 fully sufficient. And, then, there are other positions
9 that would point in the direction of further language
10 revisions. I think, ultimately, it's just a decision that
11 the Committee is going to have to make.

12 CHAIRMAN HONIGBERG: Okay. Thank you.
13 So, moving on from there, we have a new version, I think,
14 of the Comment Summary document, is that right?

15 MR. WIESNER: Very few changes in the
16 section that identifies "Major Issues To Be Addressed", we
17 just didn't make it all the way through last time. And,
18 so, we can start there. And, then, there's an entirely
19 different section, which is why it's, you know, now 20
20 pages longer than it used to be, which summarizes public
21 comments that I characterized as "not quite as major",
22 let's say. Many of them are language changes, not purely
23 editorial changes, still significant in their own right,
24 and many of them related to other issues that we have

1 discussed or will discuss today, but more in the nature of
2 definitional changes, language changes to specific
3 sections, and proposals that popped up, say, on procedural
4 issues that I did not deem quite as significant.

5 But that's, to some extent, an arbitrary
6 distinction. And, all of those are, you know, substantive
7 public comments that were submitted by people
8 participating in the docket, and should be addressed by
9 the Committee, in my view.

10 CHAIRMAN HONIGBERG: All right. Thank
11 you very much. All right. I'm flipping through the
12 document, I don't exactly remember where we left off.

13 There is speculation from up here that
14 perhaps it's Page 17.

15 MR. WIESNER: That's what I was going to
16 say. We talked about "electric transmission line
17 setbacks". And, then, I think we got scared of this
18 issue, and jumped ahead to "public information sessions".
19 But -- so, we're back on it now. So, this is "Orderly
20 Development Effects on Municipalities".

21 CHAIRMAN HONIGBERG: That's right.
22 Thank you.

23 COMMISSIONER SCOTT: That's helpful.

24 CHAIRMAN HONIGBERG: All right. If

1 people would like to take a few minutes and refresh
2 themselves on the whole level of comments, and perhaps
3 they'll remember why they were so scared of this
4 particular issue.

5 (Short pause for members to review
6 comments provided.)

7 CHAIRMAN HONIGBERG: Commissioner Scott
8 has a question for Mr. Wiesner.

9 COMMISSIONER SCOTT: If you could just,
10 for my memory perhaps, so the -- what you have before us,
11 on the left side, compared to the right side, and whose
12 changes are we seeing in red?

13 MR. WIESNER: If it's shown as tracked
14 changes, then what you're seeing is the current rules
15 proposal, with language changes proposed by the specific
16 commenter. So, on the left side, and this spills over
17 onto Page 18, but those are changes that are promoted by
18 the Town of Bridgewater Selectmen, and I believe some
19 other commenters.

20 And, on the right side, on Page 17,
21 you're seeing changes that are proposed by, excuse me, the
22 various energy companies. On Page 18, there are also some
23 comments that are not in the form of language changes, but
24 more conceptual. And, what you're seeing there is a

1 summary of positions that have been taken by other
2 commenters, such as, you know, individuals or EDP
3 Renewables.

4 CHAIRMAN HONIGBERG: And, so, the base
5 language that's unaffected by cross-outs or underlining,
6 that's the language from the rules as they have been
7 proposed, is that correct?

8 MR. WIESNER: That's correct.

9 CHAIRMAN HONIGBERG: Does that answer
10 your question, Commissioner Scott?

11 COMMISSIONER SCOTT: Yes. Thank you.

12 CHAIRMAN HONIGBERG: Does anyone have
13 any thoughts or comments on what we have before us?

14 (Short pause.)

15 MS. WEATHERSBY: Okay, I'll start.

16 CHAIRMAN HONIGBERG: Ms. Weathersby.

17 MS. WEATHERSBY: I think that the
18 proposals by the Town of Bridgewater, there's some merit
19 in some of them. The language of "including, but not
20 limited to, the Master Plans and Zoning Ordinances", I
21 think it's helpful, but I'm not sure it's necessary. It's
22 just clarifying what would be expressed in writing. So, I
23 could go either way with that one. If the Committee finds
24 that that would be helpful, that we could add it.

1 Otherwise, I think it may be implicit in the above
2 language.

3 But I do think that the changes
4 concerning the other -- "other communities impacted by the
5 proposed facility", further down, would be helpful to add.
6 And, I would just perhaps clarify that, you know, or
7 shorten it to "host abutting and impacted communities".
8 And, that's in (a)(1), (b)(1), and (b)(3), and (b)(4), and
9 (b) -- and (5).

10 CHAIRMAN HONIGBERG: Does anyone --
11 excuse me. Does anyone have other thoughts or comments,
12 either on what Ms. Weathersby just said or anything else
13 about these proposed rules? Yes, Director Muzzey.

14 DIRECTOR MUZZEY: Building on the
15 comments from the Town of Bridgewater, I'm looking at the
16 definition of "Impacted Community". And, it's defined as
17 "a municipality that is neither the host nor abutting
18 although it will potentially be impacted by aesthetics,
19 financially or due to health/safety concerns." The SEC
20 considers a larger variety of impacts than those three
21 listed. And, so, I'm not certain why we would limit the
22 impacted communities to just those three.

23 And, for me, it would be more consistent
24 to say "although it will be" -- "will potentially be

1 impacted", and then not specify.

2 CHAIRMAN HONIGBERG: Okay.

3 MS. WEATHERSBY: Do we need a qualifier
4 in there, maybe like, you know, "significantly impacted"
5 or just -- just so it's not a minimal -- impacted more
6 than minimally? Just something to -- it's not taking the
7 entire region.

8 CHAIRMAN HONIGBERG: Would that then
9 move us in a different direction? Would that maybe -- I
10 mean, we should not be specifying which -- trying to
11 define "communities"?

12 DIRECTOR MUZZEY: Agree.

13 CHAIRMAN HONIGBERG: And, we have -- I
14 think all the -- when these applications get filed,
15 there's analysis of "what are the areas that are going to
16 be affected by the development, by the project?" Whether
17 it's a view thing for wind, or whatever it might be. But,
18 if you start drawing concentric circles and see how far
19 away there is significant effects, noticeable effects.

20 DIRECTOR MUZZEY: Or effects that are
21 discussed in the application.

22 CHAIRMAN HONIGBERG: Correct. And, so,
23 what -- does it make sense to try to identify towns in
24 some way other than they're in the area that's affected by

1 the project? I don't know.

2 DIRECTOR MUZZEY: Well, if we had a town
3 or city that's within a study area in the application, all
4 of those areas -- all those communities could be called
5 "impacted communities", and all of them should be
6 considered, I suppose, in this section on "orderly
7 development".

8 So, it would be communities within the
9 study areas outlined or described in the application.

10 CHAIRMAN HONIGBERG: Other thoughts?
11 Other comments? Suggestions? Commissioner Rose.

12 COMMISSIONER ROSE: I did just have one
13 comment on -- I guess it's on the "Various Energy
14 Companies" -- "Various Energy Companies" side on Page 17,
15 and I was just a bit uncomfortable with the cross-out of
16 "the economic effects on the proposed facility on the
17 state", and just wanted to -- and as well as the
18 communities. And, I do think that, you know, the fact
19 that tourism is such an important part, and I think that
20 is not just a local, but also a state impact. So, I
21 wouldn't be comfortable with that strike-through on line
22 (2), on Page 17, on the right-hand side.

23 CHAIRMAN HONIGBERG: When you say "line
24 (2)", you're referring to, I think, (b)(2), --

1 COMMISSIONER ROSE: Yes. I'm sorry.

2 CHAIRMAN HONIGBERG: -- it's about just
3 below halfway down the page?

4 COMMISSIONER ROSE: Correct. Yes.

5 CHAIRMAN HONIGBERG: Okay.

6 COMMISSIONER ROSE: Yes. (2)(b), and
7 then (2).

8 CHAIRMAN HONIGBERG: I think, having
9 heard that, the discussion we've just had, I don't have a
10 problem with the suggestion from the Town of Bridgewater
11 to include examples of the types of documents that might
12 be things that are expressed in writing. I don't think it
13 adds anything substantive, but I don't think it hurts.
14 And, I think the base language that, as it was proposed,
15 is better than the suggestion from the Various Energy
16 Companies, in part because of what Commissioner Rose just
17 said.

18 But I'm not sure that adding a
19 discussion about "impacted communities" makes sense. I
20 think we've already got identification of the areas that
21 are affected when the applications are submitted. If
22 there's a disagreement that it should be broader, people
23 bring that, make those arguments, and they say "well,
24 we're affected, too." And, then, you end up working

1 through that.

2 I mean, maybe it needs to be -- maybe we
3 need to change "abutting", because maybe that's too
4 narrow. But I just -- a "broad impacted" concept, and I'm
5 not sure a modifier -- I'm not sure an adverb modifying
6 that, unless that itself is defined, is ultimately going
7 to be helpful.

8 I'm wondering whether Attorney Iacopino
9 or Attorney Wiesner have any thoughts on the wordsmithing
10 of this?

11 MR. IACOPINO: Well, the section of the
12 rules that you're discussing right now, Mr. Chairman,
13 involve what goes into the application. And, we do
14 typically see, for instance, with a viewshed analysis, a
15 10-mile radius. In the historical resources section,
16 there's usually an area of impact. And, those -- and
17 sometimes we see them -- see similar sort of designations
18 of impacted areas in other parts of the application or
19 under other criteria in the application as well. But they
20 may all be different, which is one thing that you should
21 probably be considering. For instance, a 10-mile viewshed
22 may be much more than what the impacted area for
23 historical resources may be, or vice versa. So, that's
24 one thing that I think you should keep in mind in

1 determining how to deal with this language, whether you
2 use the word "impacted" or something else, or, if you're
3 going to use that word, how do you define it?

4 But I also point out that there's other
5 aspects of the application that are filed that could have
6 impacts, for instance, property values. Who knows how far
7 off, how far of a area of impact there is for the effect
8 of the project on property values or other types of
9 economics which you're now required to consider under the
10 statute? And, so, I think it's difficult to, as the Chair
11 said, actually identify where the impacts are.

12 In the past, what's happened is, if
13 somebody feels that they're going to be impacted by the
14 facility, they file a motion to intervene. They explain
15 what -- how the facility is going to impact them, that
16 becomes their substantial right, title or interest or
17 claim in the proceeding. And, they're granted
18 intervention rights to then defend that, that position.

19 So, I think that, if you -- I think that
20 you have to be careful about how you define that. Because
21 these applications are very large, and if the applicant is
22 required to, you know, go, as in the concentric circles
23 that Mr. Chairman spoke about, you know, many, many miles,
24 they could get much larger, much more unwieldy, much more

1 difficult for the public to understand, which is one of
2 the requirements of -- one of the purposes of your
3 statute. So, I would counsel making that, I don't want to
4 say "narrow", because that's not the right word, but
5 making the definition as precise as you can. So that
6 there is -- so that your applicant knows exactly what they
7 need to provide, but also leaving it open so that somebody
8 who says "well, I might not be within that 10-mile
9 viewshed, but this plant is going to impact me because", I
10 don't know, whatever the reason might be, they have a
11 voice and a way to express the impact on them.

12 CHAIRMAN HONIGBERG: I thank you for
13 refreshing our memories, that the section we're talking
14 about is a description of what the applicant is to
15 provide. That's sometimes helpful to keep in mind.

16 So, Attorney Iacopino, as among the
17 language as it was proposed, the use and addition of
18 "impacted" by -- from the Town of Bridgewater, and
19 actually versus the Various Energy Companies' removal of
20 certain language, which is the one that gets us an
21 identifiable set of things that need to be filed, that
22 includes sufficient information, so that those who might
23 feel they need to intervene are informed and gives the
24 Committee the information it needs to proceed?

1 MR. IACOPINO: Combination of both. I'm
2 sorry, but that's what it seems to me to be. I mean,
3 there are things that are in the energy facilities that I
4 think are realistic to have in the application that aren't
5 in the other one, and vice versa. For instance, --

6 (Court reporter interruption.)

7 MR. IACOPINO: I'm sorry. For instance,
8 unless I'm missing it, what number would it be? In the
9 energy -- Various Energy Companies' version, (b) -- I
10 guess it's (b)(4), they specifically reference "tourism".
11 I didn't see that in the Bridgewater, unless --

12 CHAIRMAN HONIGBERG: That's from the
13 base document. The word "tourism" is in the base
14 document. And, it's on Page 18, unchanged.

15 MR. IACOPINO: Am I missing it?

16 CHAIRMAN HONIGBERG: Near the top of the
17 page, "The effect of the proposed facility on tourism and
18 recreation in the host communities and communities
19 abutting the facility." That's the language as it was
20 proposed.

21 MR. IACOPINO: I'm sorry. Okay. All
22 right.

23 CHAIRMAN HONIGBERG: The changes, the
24 competing changes are that the Town of Bridgewater's

1 suggestion is to put in the "other impacted communities";
2 the Various Energy Companies' proposal is to take out the
3 phrase "in the host communities and communities abutting
4 the facility". So that the statement would be "The effect
5 of the proposed facility on tourism and recreation."

6 Director Muzzey.

7 DIRECTOR MUZZEY: One other possible
8 idea would be to use something along the lines of "the
9 host community or other communities discussed in the
10 application for a certificate".

11 CHAIRMAN HONIGBERG: And, that would be
12 in replace of "the host community and communities abutting
13 the proposed facility"?

14 DIRECTOR MUZZEY: And the idea of
15 "impacted communities" as well.

16 CHAIRMAN HONIGBERG: That's what I mean.

17 DIRECTOR MUZZEY: Yes.

18 CHAIRMAN HONIGBERG: In the base
19 document, that's the phrase. "In the host communities and
20 communities abutting the proposed facility", that's the
21 language that repeats in the base, the document that we
22 put forward.

23 DIRECTOR MUZZEY: In several locations,
24 right.

1 CHAIRMAN HONIGBERG: And, so, the
2 language you just articulated would replace that phrase --

3 DIRECTOR MUZZEY: In a number of places
4 where it appears.

5 CHAIRMAN HONIGBERG: Commissioner Scott.

6 COMMISSIONER SCOTT: I was going to
7 address a new topic here. So, if you're still on
8 "impacted", I can wait.

9 CHAIRMAN HONIGBERG: Let's see if we can
10 run "impacted" to ground.

11 MR. IACOPINO: I don't think you want to
12 eliminate "abutting communities". I mean, it's always
13 been the policy, if not a written rule of the Committee,
14 that we've always noticed abutting communities. RSA 541-A
15 actually requires it in a separate statute. This is an
16 administrative proceeding. So, if I were you, I would not
17 counsel you to eliminate the term "abutting communities".

18 CHAIRMAN HONIGBERG: So, it's "host
19 communities, abutting communities, and those communities
20 identified in the application", something like that?

21 MR. IACOPINO: Something along those
22 lines, yes.

23 CHAIRMAN HONIGBERG: How do people feel
24 about that?

1 (Multiple members nodding in the
2 affirmative.)

3 CHAIRMAN HONIGBERG: I see nodding
4 heads.

5 COMMISSIONER ROSE: Yes.

6 CHAIRMAN HONIGBERG: I like nodding
7 heads.

8 Commissioner Scott, a new topic within
9 this general topic.

10 COMMISSIONER SCOTT: Yes. I look at the
11 Energy Companies collectively, their striking, at the top
12 of the right-hand side, "including the views of the
13 municipal and regional planning commissions", basically
14 government bodies. I don't think I agree with that.
15 However, if I did, I still think the follow-on "if such
16 views have been expressed in writing" I think goes with
17 that strike-out. I don't think that's independent. So,
18 taking one out and not the other, I don't think
19 structurally it works.

20 But I think leaving it in better suits
21 and clarifies that. I know, as a Committee member, not
22 that those bodies can't come in by themselves, but it's
23 helpful for me to understand the interactions and where
24 those positions are for those bodies. So, I think it

1 helps to have that in there explicitly.

2 CHAIRMAN HONIGBERG: I would not support
3 the striking of that language. And, I agree that the "if
4 such views" has no -- has nothing to tie it to as
5 proposed. I think that's an accident. But I'm sure it
6 could be fixed grammatically. But I do think it's -- the
7 applicant should come in, if there's expressions in
8 writing from the municipalities or other municipal body,
9 cities, towns or other municipal entities, they should
10 know what they are. And, if they are in writing, they
11 should be provided. Everyone agrees with that, I think?

12 (Multiple members nodding in the
13 affirmative.)

14 CHAIRMAN HONIGBERG: All right. We have
15 some other comments, the ones that were not specific to
16 rules that are listed on Page 18. Does anyone want to
17 take up -- take up the charge for any of these concepts or
18 suggestions that are being made here? Commissioner Scott.

19 COMMISSIONER SCOTT: Looking at the top
20 of -- top right of Page 18, I think, as long as we keep
21 the language we just agreed to keep in, basically, any
22 views that the government bodies -- local government
23 bodies have put in writing, I think the "zoning and local
24 votes", I think, to the extent they have been done, I

1 think that kind of almost is one in the same. So, I'm
2 comfortable with, if we leave in the language we just
3 agreed to, I'm not sure we need to elaborate beyond that,
4 I think.

5 CHAIRMAN HONIGBERG: Okay. What about
6 some of the other suggestions, the ones that are lower
7 down on Page 18?

8 DIRECTOR MUZZEY: Looking at the first
9 one, from Tuveson and Holderness, I think that's a
10 fascinating question, particularly as a historian, but I
11 would hesitate to expect that type of historical
12 information throughout particularly a large project area.
13 So, I'm not -- I'm just not sure that's doable.

14 CHAIRMAN HONIGBERG: Understanding that
15 the section we're talking about is what the applicant
16 needs to provide, I'm inclined to agree. But, if someone
17 comes in and says that "what they're proposing to do is
18 completely at odds with what the purpose of the grant was
19 150 years ago", that might be relevant at an appropriate
20 time during the proceeding, right?

21 DIRECTOR MUZZEY: Well, certainly. All
22 public comment would be.

23 CHAIRMAN HONIGBERG: Yes.

24 DIRECTOR MUZZEY: And, some of this

1 could be -- could be gathered when the SEC is considering
2 effects on historical properties, but certainly not the
3 entire right-of-way.

4 CHAIRMAN HONIGBERG: Does anyone agree
5 with EDP Renewables' suggestion, in the lower right on
6 Page 18, that the "Description of prevailing land uses and
7 effects on tourism and recreation should be limited to the
8 host and abutting communities in the area of potential
9 visual effect"?

10 To me, it seems inconsistent with what
11 else has been going on.

12 DIRECTOR MUZZEY: I agree.

13 CHAIRMAN HONIGBERG: Okay. Commissioner
14 Scott?

15 COMMISSIONER SCOTT: I agree. I would
16 not support adding that language.

17 CHAIRMAN HONIGBERG: All right. What
18 about the suggestions in the lower right, which I think
19 both relate to "real estate values" in slightly different
20 ways, but they are -- well, actually, more than
21 "slightly", in different ways?

22 MS. WEATHERSBY: I guess I have a "new
23 person" question with regard to that. Because they're
24 being required to discuss the effect on regional real

1 estate values, do typically they come in with an analysis
2 of how that -- the effect on a region -- the regional
3 values was calculated? I mean, do they actually go and
4 assess each of the properties? And, if so, perhaps this
5 would be reasonable. If it's a higher analysis, it seems
6 a bit burdensome.

7 CHAIRMAN HONIGBERG: Attorney Iacopino,
8 do you have any perspective on that?

9 MR. IACOPINO: It's not been our
10 experience that an applicant comes in with individual
11 appraisals for property. In some cases, we have had
12 studies done of the region, particularly in the wind
13 cases, you tend to get an economic report authored by an
14 economist, who addresses the effect that he or she
15 predicts the project will have on the region and real
16 estate values in the region.

17 And, oftentimes we also get studies from
18 outside agencies, government entities, like the Berkeley
19 Lab and things like that, who have done such studies in
20 other places primarily, but they seem to be a standard
21 that is used in the industry.

22 So, in most of the applications, we get
23 some combination of documents like that that get filed as
24 attachments to the application. That's been the practice.

1 Of course, the transmission facilities and wind facilities
2 impact linearly. So, there's more property impacted,
3 probably a larger task, than if you have a stand-alone,
4 you know combined cycle facility or wood burner.

5 So, that's what we have typically
6 gotten. We typically have not received individual
7 appraisals for every property along the route.

8 MS. WEATHERSBY: Thank you. It would
9 seem then that would be burdensome to require them to do
10 that, particularly where the property owner that feels as
11 though they're affected can intervene and present their
12 evidence concerning their specific property.

13 CHAIRMAN HONIGBERG: Would we even have
14 the statutory authority to do anything, if there were --
15 if a project went through and it reduced someone's
16 property values, would that be anything that the SEC would
17 have jurisdiction over?

18 MR. IACOPINO: No.

19 CHAIRMAN HONIGBERG: I didn't think so.

20 MR. IACOPINO: You don't have eminent
21 domain authority. What we're talking about in this
22 section of the rules is "what information should the
23 applicant be required to provide in its application?"

24 CHAIRMAN HONIGBERG: Although, I was

1 focused on the second of those, of the two proposals,
2 which I realize is making a suggestion regarding a
3 different time period. But it says that, if there's loss
4 of value, it "should be compensated". That's not
5 something that would be within our jurisdiction, right?

6 MR. IACOPINO: No, it's not. And, that
7 would be something that would probably wind up in the
8 superior court as an individual action between an
9 individual property owner and the developer. Except,
10 well, I think, in gas pipelines, it's a little bit
11 different.

12 CHAIRMAN HONIGBERG: Interstate gas
13 pipelines, that would be done at the federal level.

14 MR. IACOPINO: Yes. Yes. And, it's
15 done in the federal court, as opposed to the superior
16 court.

17 CHAIRMAN HONIGBERG: All right. Are
18 we -- do we have any other things we want to talk about
19 with respect to this part of the document?

20 (No verbal response)

21 CHAIRMAN HONIGBERG: All right. Seeing
22 none.

23 MR. WIESNER: Can I just make sure I
24 understand where the Committee -- get the Committee's

1 guidance as far as the question of including "impacted
2 communities" and how those would be defined?

3 CHAIRMAN HONIGBERG: I think we ended up
4 not with "impacted communities", but with "communities
5 identified in the application".

6 MR. WIESNER: For whatever purpose?

7 CHAIRMAN HONIGBERG: Yes.

8 MR. WIESNER: Okay.

9 CHAIRMAN HONIGBERG: But, essentially,
10 where Bridgewater suggested adding that phrase, I think
11 we're suggesting adding a different phrase, but picking up
12 the concept.

13 MR. WIESNER: So, a community that would
14 have been studied for visual impacts then will be a
15 relevant community for this section as well?

16 CHAIRMAN HONIGBERG: That's how I
17 understood what Director Muzzey had in mind, and I think
18 everybody seemed to agree that that was at least a
19 sensible way to think about it going forward.

20 MR. WIESNER: Okay. Thank you.

21 DIRECTOR MUZZEY: My one note on that is
22 I had suggested "communities discussed in the
23 application", as opposed to merely "identified".

24 CHAIRMAN HONIGBERG: Okay. That's a

1 little different.

2 DIRECTOR MUZZEY: And, for me, that they
3 were handled in a more substantial fashion than just being
4 on a list somewhere.

5 CHAIRMAN HONIGBERG: Is "discussed"
6 specific enough? I have a sneaking suspicion it's not.

7 MR. WIESNER: "Covered by a relevant
8 study" or something like --

9 DIRECTOR MUZZEY: "Studied in this
10 application"?

11 MR. WIESNER: "Studied"?

12 DIRECTOR MUZZEY: If this raises
13 problems, "identified" I'm sure is sufficient.

14 CHAIRMAN HONIGBERG: "Identified" is
15 certainly broader. Because, as you say, it could just be
16 one of the ones that's out there. But I think the idea is
17 that, if it's near enough that you would think about it,
18 you would want to think about all of these things that
19 might affect it, right? Isn't that kind of how you'd go
20 about this?

21 DIRECTOR MUZZEY: Yes.

22 CHAIRMAN HONIGBERG: All right.

23 DIRECTOR MUZZEY: That was the intent.

24 CHAIRMAN HONIGBERG: How was that,

1 Mr. Wiesner? Is that muddy enough for you?

2 MR. WIESNER: That does help.

3 CHAIRMAN HONIGBERG: All right. I think
4 we jumped over 16 as well, didn't we, on Page 19? Because
5 I think we were in "Public Information Sessions".

6 MR. WIESNER: Yes.

7 CHAIRMAN HONIGBERG: Off the record.

8 (Brief off-the-record discussion
9 ensued.)

10 CHAIRMAN HONIGBERG: All right. So,
11 should we talk about a fairly large issue here, Siting
12 Criteria Formulation? There is a -- it's on Pages 19 and
13 20 of this document. And, it's not something I think
14 we've picked up before. Right, Mr. Wiesner?

15 MR. WIESNER: Yes. That's correct.
16 And, this is essentially an example of the differences in
17 how siting criteria may be formulated in the rules. I'll
18 just note that the language here is proposed by, on the
19 left-hand side, excuse me, proposed by the Appalachian
20 Mountain Club and New Hampshire Audubon, as one type of
21 formulation. Where findings are made based on the record,
22 rather than issues to be considered by the Committee in
23 making its findings under the statute.

24 This is not the only example in the

1 comments submitted by those environmental organizations of
2 places where this type of formulation would appear, also
3 in connection with the aesthetic finding, and also in
4 terms of effects on the natural environment, air and water
5 quality.

6 CHAIRMAN HONIGBERG: My memory is that
7 this was the subject of some comment at the public
8 hearing. And, I think I recall the presentation of both
9 sides of this. I don't remember who it was, but I think
10 it might have been Mr. Getz, who talked about thinking of
11 criteria as identifying the issues and making sure you
12 deal with each of those issues in considering the public
13 interest of, in any application, in how to proceed.

14 Whereas, excuse me, the AMC and the
15 Audubon are thinking of criteria as a series of "yes" or
16 "no" questions, either it does or it doesn't meet a
17 particular criterion. Is that a fair way of identifying
18 the disagreement for the two different positions?

19 MR. WIESNER: I believe that's correct.
20 So, the AMC comments would look to the record as
21 demonstrating that certain adverse consequences will not
22 occur. Whereas, as proposed in the rules, and I think
23 it's more a list of considerations of various issues that
24 to some extent must be considered, and will be weighed by

1 the Committee in making the finding that's required under
2 the statute.

3 CHAIRMAN HONIGBERG: I don't recall the
4 AMC/Audubon proposal putting out a formula. I don't think
5 they got to that next step, and said, "well, if you
6 meet" -- they had seven criteria listed here, "if you meet
7 five, you're good", or "if you meet four, you're good", or
8 "you need to meet all seven, and, if you don't, you can't
9 be approved." They didn't go that far, did they?

10 MR. WIESNER: No. I think what you see
11 here is a good example of the type of formulation. Which
12 is that there must be a finding, based on the record,
13 that, for example, the facility "would not reduce the
14 likelihood of persistence of a rare plant species."

15 But it's not a balancing test. It is
16 more of a checklist, if you will, on those items.

17 MR. IACOPINO: It requires all seven.

18 MR. WIESNER: But, it requires, yes, it
19 requires all seven of them in order for the finding to be
20 made.

21 CHAIRMAN HONIGBERG: Oh. So, as
22 formulated, if the applicant fails on any one of the
23 seven, it precludes a finding that -- a finding in their
24 favor?

1 MR. WIESNER: That's correct.

2 CHAIRMAN HONIGBERG: Okay. Anyone have
3 other questions or clarifying comments or other comments
4 on this issue? Director Muzzey.

5 DIRECTOR MUZZEY: I have the observation
6 that, for all of the areas considered under the criteria
7 relative to findings of unreasonable adverse effects, and
8 under that we have aesthetics, historic sites, air
9 quality, water quality, wildlife, public health and
10 safety. My concern is that we just do it the same way for
11 all of those areas (a) through (f). I don't have a
12 specific suggestion as to which is better, but I don't
13 think we should call out just three of the five or
14 whatever portion is being suggested and change our method
15 of determining things.

16 CHAIRMAN HONIGBERG: Mr. Wiesner, I
17 think you said earlier, and I think that's one of the
18 things you were alluding to earlier. That this same issue
19 presents itself in a number of areas, as Director Muzzey
20 just said. The one we have in front of us happens to be
21 the one "the effect on the natural environment". But you
22 would be looking at, I assume, at the same kind of
23 formulation issue on the other aspects of -- that Director
24 Muzzey just talked about.

1 MR. WIESNER: Yes. That's correct. On
2 aesthetics, in particular, and also on air and water
3 quality, comments submitted by the AMC and by Audubon have
4 a similar formulation, where there must be a finding on
5 the record that a particular description of an adverse
6 effect would not occur in order for the Committee to
7 approve a certificate.

8 CHAIRMAN HONIGBERG: So, I think we
9 agree. That, however we approach this, however we decide
10 that these rules need to be formulated, they should be
11 formulated the same way for each of those?

12 (Atty. Wiesner nodding in the
13 affirmative.)

14 CHAIRMAN HONIGBERG: Okay. Other
15 thoughts or comments? Commissioner Scott.

16 COMMISSIONER SCOTT: I haven't decided
17 which I like better yet. But, when I look at the AMC and
18 Audubon suggestion, I'm just wondering if it allows enough
19 room. What we've seen in the past, for some projects, "is
20 mitigation being put in?" So, the project itself may have
21 "X" impact. But, when you take into account the larger
22 mitigation package, which may be nearby or may be not
23 connected, in aggregate, it provides a better good. And,
24 I'm just wondering if the AMC/Audubon language would

1 preclude that.

2 And, maybe I'll put one of the attorneys
3 on the spot. Do you think, when it says "the record must
4 demonstrate that the proposed facility", is that broad
5 enough to allow off-site mitigation to be considered as
6 part of those criteria? I don't think it does.

7 MR. IACOPINO: In some of them, I think
8 it might. But, in some, it doesn't. For instance, like I
9 think we had a situation in the Lempster case, where they
10 created a new habitat off-site. And, if one of the
11 criteria is that, number (2) two, that the proposed
12 facility "would not disturb a rare or exemplary natural
13 community", and part of the mitigation was to either move
14 or recreate a similar or better rare or natural -- or
15 exemplary natural community in another place, a strict
16 application of number (2) would probably prohibit that,
17 because you would be disturbing one.

18 Some of the other ones, like where it
19 says "would not eliminate", I suppose that that criteria
20 would fit that type of mitigation.

21 So, I think you have to be careful about
22 the first couple of words in each of these criteria, if
23 that's the way that you're going to go, and you want to
24 retain the ability to do off-site mitigation that may

1 recreate a similar or better asset in another place
2 off-site.

3 COMMISSIONER SCOTT: I wonder, if we
4 went that direction, maybe, instead of "the record must
5 demonstrate that the proposed facility" do these things,
6 maybe "the proposed project", as an aggregate maybe?

7 MR. IACOPINO: Or, you might put a
8 specific provision for mitigation in there, or an
9 exception for those, I don't know what the exact words
10 would be, but for those criteria that can be mitigated.

11 MR. WIESNER: And, we began this as a
12 discussion of sort of the general approach, the general
13 formulation. But, when you do look at some of the
14 specific items that are listed here, you know, if I look
15 at number (5), it really seems to be effectively a setback
16 requirement, if there are nests or nursing colonies within
17 a specific distance from a proposed wind energy facility.
18 And, it's not clear how mitigation would apply in that
19 case.

20 In other cases, mitigation might be
21 applicable and might be demonstrated in the record, and
22 could support a finding by the Committee that there would
23 not be an unreasonable adverse effect. But that we're now
24 getting into the real specifics of this particular list of

1 items. And, there would be similar, for example, in the
2 aesthetic realm.

3 CHAIRMAN HONIGBERG: I want to start a
4 philosophical discussion that's invited by this issue.
5 And, I think the problem is that the word "criterion" and
6 its plural "criteria" have two different meanings. That
7 they, in one meaning, it is -- it says a "criterion" is a
8 standard, and that's the approach of the AMC and the
9 Audubon Society. But "criteria" and "criterion" may also
10 refer to the things to consider. It's not the specific on
11 or off/yes or no questions, it's the things that are
12 relevant to a particular question.

13 Both meanings, I think, are valid. I
14 think Google could be our friend here and we could confirm
15 that. But I'm fairly certain that it is -- there is not
16 just one definition of "criteria". And, we have -- we've
17 been offered both options here. And, there's probably
18 more definitions, for all I know.

19 But I'm, with a background as a lawyer,
20 I am drawn to the approach that we took in our proposal,
21 which is the right-hand column here, which is to identify
22 the relevant considerations to determining the question we
23 are told to answer by the statute, which is "is this in
24 the public good?" "Is this in the public interest?"

1 "Should this go forward?"

2 Having black-and-white yes or no
3 questions asked is very constraining. It's not the way I,
4 as a lawyer, think about these things. Because that can
5 sometimes obscure what may be in the public good, because
6 you've answered a series of narrow questions, and that's
7 your answer. It definitely has the advantage of being
8 more black-and-white, but I'm not sure that's what the
9 Legislature wants us to do.

10 All right. I've thrown that out there.
11 Anybody going to react to it? Commissioner Rose.

12 COMMISSIONER ROSE: I think you are
13 correct. And, you know, my instinct is the underlying
14 change in the formula would be sufficient. You know, so,
15 I kind of like what was originally proposed in the rules
16 here. So, I'm agreeing with your assessment.

17 CHAIRMAN HONIGBERG: Attorney
18 Weathersby.

19 MS. WEATHERSBY: I agree as well. I
20 think that this Committee has been charged to hear
21 everything and come to a decision on a project balancing
22 all of the interests. And, I think that the approach of
23 the AMC and others kind of usurps some of our authority.
24 You know, we may have a really good project, but we

1 can't -- we can't allow it to go forward because it's
2 within a quarter mile of a common nighthawk site or
3 something. You know, I think that the better approach
4 would be for us to consider all of the factors that we
5 need to consider, and then use our own judgment, as we
6 have been authorized to do.

7 CHAIRMAN HONIGBERG: I see some -- I see
8 some nodding heads. Does anyone want to take the opposite
9 approach?

10 I'm sorry, you want to say something
11 else. I didn't mean to put you on the spot, Director
12 Muzzey. When you were looking at me, I wasn't thinking
13 you were going to. Sorry.

14 DIRECTOR MUZZEY: But you trying to read
15 my mind.

16 CHAIRMAN HONIGBERG: No, I wasn't. I
17 gave up on that long ago.

18 DIRECTOR MUZZEY: Okay. Although I see
19 the attractiveness of what we're calling the "AMC
20 approach", because it is black-and-white, it does raise
21 the problem in that we cannot predict the future. And,
22 there are -- and it really doesn't accommodate aspects of
23 a project or public concerns that we haven't anticipated
24 at this point. So, I'm hesitant to lay down those

1 black-and-white criterion, because it does -- it doesn't
2 provide for flexibility that may be needed in the future.

3 CHAIRMAN HONIGBERG: Commissioner Scott.

4 COMMISSIONER SCOTT: The attractiveness
5 to the AMC/Audubon proposal to me is that it's instructive
6 to a potential applicant. Meaning, it does give
7 specifics, which I think are helpful.

8 Having said that, I don't disagree. I
9 think having flexibility to look at the aggregate is very
10 important. So, I'm favoring the right side, but I hate to
11 throw away the left side, if that makes sense. Meaning, I
12 think it's an instructive list to be considered. I'm not
13 quite sure how to get that into the mix of things. And,
14 certainly, it would not -- I don't think I'd use them as a
15 black-and-white "if you don't meet this, then you can't
16 qualify and you can't be approved."

17 But it strikes me that it would be
18 helpful to have some kind of list like that. Having said
19 that, I don't know how to do that. You know, this is
20 rulemaking, so, it's a little bit different.

21 CHAIRMAN HONIGBERG: Well, doesn't --
22 but doesn't the list on the right, the list of things that
23 need to be considered, pick up those? And, if you think
24 of those things on the left, I mean, I really think all

1 they were trying to do with their proposal was turn the
2 considerations into "yes" or "no" questions. I think, if
3 you look at -- if you have to deal with, say, for example,
4 number (2), "The nature, extent, and duration of the
5 potential effects on the affected wildlife species, rare
6 plants, rare natural communities, and other exemplary
7 natural communities", then you will have to give
8 consideration to, when you're making your presentation,
9 and we, as we decide whether it's in the public interest,
10 whether it would affect a rare plant species, the
11 persistence of a rare plant species within the ecological
12 subsection in which the proposed facility is located, or
13 whether it would disturb a rare or natural -- I'm sorry, a
14 rare or exemplary natural community.

15 So, I think that we wouldn't -- an
16 applicant would need to consider that in making its
17 presentation, and those who are concerned about a
18 project's effect on such a community would be bringing
19 forward evidence about it. I mean, that's just how I see
20 this shaking out, because that's really -- that's how
21 these disputes get -- that's how disputes like that get
22 resolved.

23 I'm not disagreeing that having a
24 specific list of things wouldn't be attractive. But I'm

1 not sure that that's what the Legislature wants us to do.

2 (Short pause.)

3 CHAIRMAN HONIGBERG: We stumped the
4 panel. Director Muzzey.

5 DIRECTOR MUZZEY: One potential use for
6 this type of list on the left-hand side of the page would
7 be in some sort of state-issued guidance on best practices
8 for large energy facilities. That's where I would expect
9 to see such specific guidance as to what may or may not be
10 appropriate or helpful to the natural environment when
11 siting an energy facility.

12 CHAIRMAN HONIGBERG: And, would that --
13 would such guidance come from a body like ours, or, in
14 this instance, since it's about the effect on the
15 environment, wouldn't that come from the Department of
16 Environmental Services?

17 I note the Commissioner of Environmental
18 Services is not here. So, we can task him with anything
19 we want.

20 DIRECTOR MUZZEY: I think it would be
21 appropriate to have a holistic document that considered
22 all of the potential effects, and not just, you know, not
23 just best practices when it comes to the natural
24 environment, but also the historic environment, and any

1 other of these types of public health and safety, all of
2 those considerations. I think it would be very helpful to
3 have that type of document issued by the state. We,
4 obviously, don't have anything like that, and it would be
5 a tremendous effort. But that's where this type of
6 thinking could go into.

7 CHAIRMAN HONIGBERG: Attorney Iacopino.

8 MR. IACOPINO: Merely to remind those
9 Committee members that sat on the wood-burner in Berlin.
10 The Department of Resources & Economic Development
11 actually puts out "best practices for forestry". And, we
12 actually made that -- incorporated that in that decision,
13 when we were talking about the effect on the forests from
14 the additional wood that would be required to fuel that
15 facility.

16 So, that's one example of what Director
17 Muzzey is discussing. And, there are probably three State
18 agencies, DRED, DES, and Fish & Game, that all have sort
19 of a piece of this particular area.

20 CHAIRMAN HONIGBERG: Commissioner Scott.

21 COMMISSIONER SCOTT: A tiny bit off
22 topic, but I just wanted to, a lot of the folks weren't
23 involved at the time, this was quite a few years back.
24 But I know, and forgive me if I get the groups wrong, but

1 I think Audubon, and I think AMC, there was kind of a
2 collective group that did do some -- attempt to do some
3 best practices, which is on the SEC website. That's not
4 as inclusive as what we're talking about, but it was an
5 attempt to get, for wind developers, you know, what could
6 be done, you know, where there's general areas of
7 agreement.

8 CHAIRMAN HONIGBERG: I believe there is
9 consensus to stay with the formulation as we proposed it.
10 Am I correct about that?

11 (Multiple members nodding in the
12 affirmative.)

13 CHAIRMAN HONIGBERG: All right. Now,
14 are there changes we would want to make in response to the
15 proposal from the Various Energy Companies?

16 COMMISSIONER SCOTT: Mr. Chair?

17 CHAIRMAN HONIGBERG: Commissioner Scott.

18 COMMISSIONER SCOTT: I think I'm okay
19 with the strike-outs in the context, I'll start with -- I
20 think I just want to -- the attempt was to, under number
21 (4), the views of "state agencies" or "government
22 agencies". So, I'm assuming, by striking out "Fish &
23 Game, the Natural Heritage Bureau", *etcetera*, that it's
24 assumed that if you just said "the views of agencies

1 authorized to identify", those are included, and maybe
2 there's others beyond that. So, I think I'm okay with
3 that. And, my view is, by striking it, it's actually more
4 inclusive or broad, to make sure everybody is in that net.
5 So, I think I'm okay with that.

6 Similarly, "best practical measures",
7 again, this is, if we go with the right side, if you will,
8 where if these are the things we're looking at when we
9 determine. And, if we take out "best practical measures",
10 it's the same. We're going to be able to look at all
11 measures, not just the "best practical measures". So,
12 maybe they took out some really poor measures, I guess.

13 CHAIRMAN HONIGBERG: Yes. I think, put
14 another way, we're taking a look at the measures
15 they're -- they've undertaken or plan to undertake, and
16 then they can explain why they're the best practical
17 measures, and somebody else can explain why perhaps
18 they're not.

19 MR. WIESNER: If I could just jump in?
20 Both on "best" -- I mean, what I did is I replicated here
21 all of the comments that the Various Energy Companies made
22 on this particular section. Although, later on in this
23 document there's a specific outline for the issues of both
24 "best practical measures", which is a defined term under

1 the current proposed rules, and also "adaptive
2 management".

3 So, I guess I would suggest that we
4 defer that discussion until we get to those specific
5 issues. Because there are also different views on whether
6 "best practical measures", a defined term, should be
7 revised, in terms of its definition, and how it should be
8 applied, if it should be applied, to anything other than
9 wind energy facilities under these rules.

10 CHAIRMAN HONIGBERG: I'm happy to hold
11 off on discussing that. I assume everybody else is as
12 well?

13 (Multiple members nodding in the
14 affirmative.)

15 CHAIRMAN HONIGBERG: Yes. What about
16 the proposal on Page 20, to turn what appears to me to be
17 a fairly general statement regarding conditions to a very
18 specific statement regarding wind energy facilities?

19 MR. WIESNER: The key to that change is
20 the deletion of "adaptive management", which, again, is an
21 issue that I've teed up further on in the document.

22 CHAIRMAN HONIGBERG: Well, isn't it also
23 turning a general statement into one that's just about
24 wind? Because the black, or the unchanged language, the

1 not crossed out or underlined, is, I mean, again, I don't
2 have the -- I would have to look for the proposal
3 somewhere else in my pile. But I understood that the
4 document has language that, if it's unchanged, it's what
5 we proposed. And, that's a general statement about
6 "conditions...in the certificate for post-construction
7 monitoring and reporting to address potential adverse
8 impacts", or "reporting and adaptive management", I'm
9 sorry, "to address potential adverse impacts".

10 MR. WIESNER: That's correct. There's
11 also EDP has proposed that that entire (e)(7) be deleted.

12 CHAIRMAN HONIGBERG: Really?

13 MR. WIESNER: Yes.

14 CHAIRMAN HONIGBERG: Do they have it --
15 do they pick it up someplace else? Let me put it this
16 way. I think that's a really bad idea. It should be in
17 here somewhere. So, either here or someplace else.

18 Director Muzzey.

19 DIRECTOR MUZZEY: Given that this is a
20 consideration of whether or not conditions should be
21 included, the Committee can decide either way. And, I
22 think limiting it to wind or putting other constraints on
23 it very much weakens the idea of it, and it needs to apply
24 to all energy facilities.

1 CHAIRMAN HONIGBERG: I agree with that.
2 And, I think, if there's an issue about whether to include
3 the phrase "adaptive management", we'll pick that up when
4 we discuss that phrase later on, I gather. Right, Mr.
5 Wiesner?

6 MR. WIESNER: Yes.

7 CHAIRMAN HONIGBERG: Does everybody
8 agree with Director Muzzey and me on this one? That
9 there's no reason to limit this provision, given where it
10 is in the document, just to wind?

11 (Multiple members nodding in the
12 affirmative.)

13 CHAIRMAN HONIGBERG: Okay. Good. Yes,
14 Commissioner Scott.

15 COMMISSIONER SCOTT: I would go beyond
16 that, in that I think there's no reason to limit it just
17 to "avian mortality studies". Again, if I understand
18 right, this section is global.

19 CHAIRMAN HONIGBERG: Right. I think
20 that the changes that are proposed are to make it about
21 wind. And, avian mortality studies, I assume, is largely
22 about wind, because I don't think, even in large
23 transmission projects, birds can electrocute themselves.

24 COMMISSIONER SCOTT: But, anyways, I

1 just want to not be that specific I think would be better.

2 CHAIRMAN HONIGBERG: I agree. I think
3 the consensus up here is that the original language,
4 either with or without "adaptive management" that we'll
5 deal with later, is the way to go in this section?

6 (Multiple members nodding in the
7 affirmative.)

8 CHAIRMAN HONIGBERG: All right. I see
9 nodding of heads. Good. I like nodding heads.

10 All right. I think discussed "Public
11 Information Sessions", which is Category 17. Did we talk
12 about "Site Visits by the Committee", I don't remember?

13 MR. WIESNER: We didn't make it that
14 far.

15 CHAIRMAN HONIGBERG: Let's talk about
16 "Site Visits by the Committee".

17 (Short pause for members to review
18 comments provided.)

19 CHAIRMAN HONIGBERG: Anyone have any
20 thoughts or comments on this?

21 MR. HAWK: Doesn't the statute limit us
22 on how many public meetings we could have?

23 CHAIRMAN HONIGBERG: I don't think so.
24 Attorney Iacopino.

1 MR. IACOPINO: There is a minimum
2 number, but there is no maximum number. And, if it
3 survived the various changes to the statute, I believe
4 that there was also a provision that permitted you to have
5 additional public hearings, if requested by an affected
6 community.

7 MR. HAWK: Okay.

8 CHAIRMAN HONIGBERG: Commissioner Scott.

9 COMMISSIONER SCOTT: On that, it sounds
10 like we're talking about that -- Mr. Tuthill's suggestion,
11 it sounds like. I will note that he's not suggesting a
12 "public hearing", it's just an "information session",
13 which could mean a lot of things, right, I think? And, to
14 me, that would mean the applicant should be working with
15 the town and provide some information publicly, I think.
16 So, I'm not particularly aggrieved by that.

17 My first reaction was "gee, if you look
18 at a large transmission line, that could be a lot of
19 towns. But, to the extent that they should be working
20 with those towns, I'm not sure I have an issue with that.

21 CHAIRMAN HONIGBERG: All right. Can I
22 get us on the same page? Because I'm fairly certain we're
23 not on the same page literally. I thought we had already
24 dealt with "public information sessions".

1 COMMISSIONER SCOTT: Oh.

2 CHAIRMAN HONIGBERG: Have we not? Am I
3 mistaken?

4 DIRECTOR MUZZEY: Was that within the
5 context of HB 614?

6 CHAIRMAN HONIGBERG: Well, we also
7 talked about it last time. Because we, as Attorney
8 Wiesner reminded us at the beginning, we got to a point
9 where we got to a couple of sticky issues, we decided to
10 jump ahead. And, I think we talked about "Public
11 Information Sessions", which are, in fact, affected by
12 House Bill 614.

13 Is there more that needs to be discussed
14 with respect to "Public Information Sessions"?

15 (No verbal response)

16 CHAIRMAN HONIGBERG: I think the
17 issue --

18 MR. WIESNER: I hadn't thought that it
19 was.

20 CHAIRMAN HONIGBERG: Yes.

21 MR. WIESNER: And, you know, other than
22 making the specific language changes that are now enacted
23 into law under HB 614, I think we are probably good on
24 that subject.

1 CHAIRMAN HONIGBERG: All right.

2 MR. WIESNER: But we do need to address
3 "Site Visits". And, here we have a variety of comments.
4 Essentially, you know, the first one is, basically,
5 "should a site visit be in the discretion of the Committee
6 or it should be something that occurs as a matter of
7 course, if requested by a party?"

8 CHAIRMAN HONIGBERG: What's the current
9 or the preexisting law and practice on this? Attorney
10 Iacopino.

11 MR. IACOPINO: I believe it's
12 discretionary with the Committee. There's no requirement
13 of it, of a site visit, *per se*. As a practical matter,
14 the Site Committee or a subcommittee has taken a site
15 visit on every application, at least that I can remember,
16 and that goes back to '98.

17 CHAIRMAN HONIGBERG: It seems to me
18 that, given that history, the Committee has done a fairly
19 good job of understanding when a site visit is
20 appropriate. And, if every application has been
21 accompanied by a site visit, it seems unnecessary to make
22 it a requirement, because then we're going to get into
23 other types of proceedings, perhaps, where these rules
24 might apply. I'm inclined to leave it -- leave to the

1 Committee or Subcommittee discretion that, if it believes
2 it's in -- that it's appropriate, it should do it.

3 Other thoughts? Attorney Weathersby.

4 MS. WEATHERSBY: I just can't imagine a
5 time when a site visit wouldn't be helpful to this
6 Committee, when we're dealing with large scale energy
7 projects. And, I almost feel as though we owe it to the
8 abutters in the community and those affected to go out and
9 take a look. Because there's nothing -- there's nothing
10 like visiting a site to get an understanding of the
11 issues. So, I would be in favor of this language.

12 CHAIRMAN HONIGBERG: Which language?

13 MS. WEATHERSBY: Striking out the
14 discretion of the Committee.

15 CHAIRMAN HONIGBERG: Define the phrase
16 "any property which is the subject of a proceeding"? How
17 many visits do you want to make to a wind project, all the
18 properties that are --

19 MS. WEATHERSBY: Oh, I see what you
20 mean.

21 CHAIRMAN HONIGBERG: -- that are the
22 subject of a proceeding.

23 MS. WEATHERSBY: Okay.

24 COMMISSIONER SCOTT: Or, if I could

1 add, --

2 MS. WEATHERSBY: We could maybe change
3 that language to "a facility" or --

4 COMMISSIONER SCOTT: - a pipeline or a
5 transmission line --

6 (Court reporter interruption - multiple
7 parties speaking at the same time.)

8 COMMISSIONER SCOTT: Sorry.

9 MS. WEATHERSBY: I will clarify, that I
10 would be in favor of changing that to "visiting the
11 facility, and areas we feel as though are affected." But,
12 you're right, as you pointed out, I don't think we need to
13 visit every single property that may be the subject of a
14 proceeding.

15 CHAIRMAN HONIGBERG: And, I think
16 Commissioner Scott was saying, I'm not sure got picked up,
17 was that, for a pipeline that may run across a large
18 section of the state or a large transmission project,
19 that's a lot of property. I don't think -- I don't think
20 that's a reasonable expectation.

21 I mean, I'm not adverse to expanding the
22 areas that we might visit. But, as long as the discretion
23 stays with the Committee or Subcommittee, that's the
24 bottom line for me.

1 MS. WEATHERSBY: I think it's good the
2 way it is.

3 CHAIRMAN HONIGBERG: Other thoughts?
4 (No verbal response)

5 CHAIRMAN HONIGBERG: Good the way it is?
6 (Multiple members nodding in the
7 affirmative.)

8 CHAIRMAN HONIGBERG: All right. Thank
9 you.

10 The next item, on Page 23, Item 19, is
11 "Historical Resources Evaluation". We'll take a quick
12 look at this page, which doesn't have a lot on it.

13 MR. WIESNER: The substance --

14 CHAIRMAN HONIGBERG: Attorney Wiesner.

15 MR. WIESNER: I'm sorry. The substance
16 of these comments are contained in the comments filed by
17 the National Trust for Historic Preservation and the New
18 Hampshire Preservation Alliance. And, they are quite
19 extensive, and that's why I have not reproduced them here.

20 So, if the Committee wants to take the
21 time to review those, that might be helpful, in order to
22 have a more in-depth discussion of the issues.

23 CHAIRMAN HONIGBERG: All right. I'm
24 going to suggest then that we take a break now and give

1 people a chance to read those comments. I'm sure those
2 who have read them before probably don't remember them.
3 But they were filed on March 23rd, posted on the website,
4 from the National Trust for Historic Preservation.

5 And, so, we'll break for fifteen
6 minutes. It's 1:25. We'll come back at 1:40.

7 (Recess taken at 1:25 p.m. and the
8 meeting resumed at 1:46 p.m.)

9 CHAIRMAN HONIGBERG: All right. To
10 bring everybody back where we were, we're talking about
11 historic sites, the effect on historic sites of an
12 application or a proposed project, the comments from the
13 National Trust for Historic Preservation. And, just so
14 people know, there's two different sections that we're
15 talking about. There's the section about what needs to be
16 included in an application, and that's in 301.06(c), I
17 think, (b) and (c) -- maybe it's just 301.06 period,
18 "Effect on Historic Sites". And, then, how to evaluate
19 whether there's unreasonable adverse impact is 301.14.

20 So, having reviewed those, having
21 reviewed the letter from the National Trust for Historic
22 Preservation and their comments, does anyone have any
23 thoughts or comments on these sections? Commissioner
24 Scott, I think you do. No, I really think you do.

1 COMMISSIONER SCOTT: I think I've just
2 been told I do. Well, actually, I guess the first
3 question I would have is, since I would view Director
4 Muzzey here with us as the subject matter expert among us.
5 Obviously, Section 106 is something that has to be done
6 anyways independently, I think, correct me if I'm wrong,
7 of the SEC. How much need is there to synergize our rules
8 or wouldn't one just be an adjunct to the other, I guess?
9 That's a very high-level question, I guess.

10 CHAIRMAN HONIGBERG: Director Muzzey.

11 DIRECTOR MUZZEY: I have kept a chart of
12 SEC projects, projects undergoing SEC review, versus
13 projects undergoing 106 review. And, going back several
14 decades, I've only found one project that did not undergo
15 a Section 106 review, that also underwent SEC review. So,
16 historically, the Committee has very much relied on
17 findings of Section 106 in order to make its
18 determinations about effects on historic resources. And,
19 it's been able to do that consistently, with that one
20 exception, because that data was available.

21 COMMISSIONER SCOTT: And, again, I'm not
22 objecting necessarily to the comments, I'm just wondering
23 how deep we need to go in adding to the SEC rules. Do you
24 find that, for a potential applicant going through the

1 Section 106 requirements independently, is burdensome,
2 where they would need to be incorporated into the SEC
3 rules? Is that necessary, I guess is my overall question?

4 CHAIRMAN HONIGBERG: You might need to
5 restate the question.

6 DIRECTOR MUZZEY: Could you clarify --
7 could you clarify that?

8 COMMISSIONER SCOTT: Do you feel there's
9 a need to add additional language -- there's been quite a
10 bit of language suggested by the two, the Trust and the
11 Preservation Alliance.

12 DIRECTOR MUZZEY: Uh-huh.

13 COMMISSIONER SCOTT: Again, I'm not
14 objecting to it, *per se*. I'm just -- I'm wondering, is it
15 duplicative? Does it need to be in here, assuming it's
16 generally in the 106 requirements?

17 DIRECTOR MUZZEY: I think there are
18 certain emphases that both organizations brought that
19 would be helpful, and we also saw them coming from other
20 stakeholders as well. The concern for historic
21 landscapes, which has not been strongly stated in the past
22 in the rules, that I think we could clarify that
23 landscapes, whether rural or traditional or design
24 landscapes, are considered "historic resources". And, I

1 think that could help clarifying things for future
2 applicants.

3 There's also a discussion of cumulative,
4 as well as landscape scale, and landscaping used in a
5 different way now, landscape scale effects that I think
6 would be worth a discussion as to how we present that in
7 the rules as well.

8 But, I think, in general, if the rules
9 just summarily went through the steps of 106, and referred
10 to 106, that's all we would need. I don't think we need
11 to add a large amount of language into our rules, because,
12 as you say, that would be duplicative.

13 COMMISSIONER SCOTT: Thank you.

14 CHAIRMAN HONIGBERG: Are there other
15 thoughts or comments regarding this set of suggestions and
16 these rules?

17 And, one thing I was interested in is,
18 in rereading the comments, I was reminded that, in their
19 letter, the National Trust for Historic Preservation,
20 supported the approach from the AMC regarding the
21 development of criteria, and what "criteria" means. But,
22 then, in their own proposed language, they actually used
23 the formulation that's largely the one that's in our
24 proposal, which is identify the relevant factors and deal

1 with them. So, we're not the only ones who identified
2 multiple definitions of the same word.

3 Director Muzzey, do you -- I know you
4 did some work on this a little bit.

5 DIRECTOR MUZZEY: Yes.

6 CHAIRMAN HONIGBERG: So, do you want to
7 share with us your thoughts on these sections?

8 DIRECTOR MUZZEY: If we turn first to
9 301.06, "Effects on Historic Sites", which discusses what
10 an application shall include, let me just look through my
11 notes here. Would you like me to actually share my
12 suggested language verbatim?

13 CHAIRMAN HONIGBERG: I think so. And,
14 to the extent that it needs some explanation or
15 clarification, you can explain or clarify. But I think
16 that's probably the most effective way to proceed.

17 DIRECTOR MUZZEY: And, I need to also
18 preface this that another concern presented by those
19 stakeholders involved the importance of the identification
20 of historical resources. Obviously, if the SEC is going
21 to consider effects, it also needs good information as to
22 what historical resources are within the area of concern.
23 So, you'll see that I've also added some language to that.
24 And, I can specify where I got this language from, if

1 Committee members have those questions.

2 Largely this follows what's already
3 written at 301.06, "Effects on Historic Sites". "Each
4 application shall include the following information
5 regarding the identification of historic sites, and any
6 anticipated adverse effects, including cumulative and
7 landscape level impacts, and plans for avoiding,
8 minimizing, or mitigating any adverse effects on the
9 proposed facility" -- "of the proposed facility on
10 historic sites."

11 (a) I feel is fine as written.
12 Although, I do note that the U.S. Code has been
13 reorganized. And, so, the note of "16 U.S. Code 470" is
14 now changed, and I can give you that new code information,
15 if you'd like. (b) is identifying archeological
16 sensitivity. (c), "Identify all historic", and this is a
17 problem throughout some of the historic areas of the
18 rules, we call them "historic sites", "historic
19 resources", "historic properties". And, so, I just
20 suggest always referring to them in the same way. So,
21 "identifying all historic", say, "properties located in
22 the proposed area" seems to be sufficient.

23 I would add a new (d), that would be
24 "Provide a finding by the New Hampshire Division of

1 Historical Resources and, if applicable, the lead federal
2 agency, of no historic properties affected, no adverse
3 effect, or adverse effect to historic properties."

4 And, just so that the Committee has the
5 finding by both the State Preservation Office and the lead
6 federal agency as to what their feelings are of the
7 project. And, then, (d) would be following the next
8 logical step of developing/evaluate best measures planned
9 to avoid, minimize, or mitigate the effects on the
10 archeological and historic properties. And, also, I
11 thought it was fine idea to include the applicant's plans
12 to implement those measures.

13 So, those were my suggested changes,
14 based on some of the emphases we have from the
15 stakeholders, but with the goal of keeping this fairly
16 straightforward.

17 CHAIRMAN HONIGBERG: Does anybody --
18 yes, Commissioner Scott.

19 COMMISSIONER SCOTT: What you
20 articulated makes sense to me as an addition. My question
21 is, obviously, your agency making a determination is one
22 thing. Is there a requirement or is it a valid concern
23 that the federal agency could just never act on something,
24 and without that positive determination you're suggesting,

1 the project can never go forth? So, do you want me to
2 rearticulate that or --

3 DIRECTOR MUZZEY: No. No. That's a
4 very valid concern. Because some of the control -- well,
5 the federal agency leads the Section 106 review. So, as
6 you say, if the lead federal agency has an alternative
7 timetable, that is a concern.

8 So, under the section of providing a
9 finding by the DHR and the lead federal agency, would you
10 suggest adding something "if available" or some sort of
11 qualifier like that? Is that what you had in mind?

12 COMMISSIONER SCOTT: Yes. Because,
13 otherwise, again, I --

14 DIRECTOR MUZZEY: Yes. I agree.

15 CHAIRMAN HONIGBERG: Other questions or
16 comments either for Director Muzzey or otherwise on those
17 sections, on the section she was just referring to?

18 (No verbal response)

19 CHAIRMAN HONIGBERG: Or what about the
20 other part of it, the 301.14?

21 DIRECTOR MUZZEY: If I could just go
22 back to 301. --

23 CHAIRMAN HONIGBERG: 06.

24 DIRECTOR MUZZEY: -- 06, I do see, when

1 I flipped the page, that there was a final piece to the
2 possible application materials, and this gets to what
3 Commissioner Scott was just talking about. "Describe the
4 status of the applicant's consultations with the DHR, and,
5 if applicable, with the lead federal agency." So, I think
6 that would be very valid to stay in there as well, because
7 that would -- that would add information to what you were
8 just discussing.

9 Going on to the "Criteria Relative to
10 Findings of Unreasonable Adverse Effects", I can preface
11 this by saying that Section 106 reviews have a finding,
12 and I mentioned them earlier, "of no historic properties
13 affected, no adverse effect, or adverse effect to historic
14 properties". So, there is no finding of significant
15 adverse effect to historic properties within 106. And,
16 so, this would be new ground for a Site Evaluation
17 Committee to make that determination.

18 The Trust has suggested that the
19 criterion -- criteria for adverse effect be used by the
20 SEC for unreasonable adverse effect on historic sites.
21 And, although I understand why they chose those well-used,
22 commonly understood criteria, I can't agree that that
23 would necessarily be the best course for the Site
24 Evaluation Committee, because we do have examples where

1 those adverse effects are mitigated and the projects have
2 moved forward.

3 Not every SEC facility does have adverse
4 effects. But, in the case of those that do, I wouldn't
5 want to jump to the conclusion that those are
6 "unreasonable adverse effects".

7 CHAIRMAN HONIGBERG: So, not every
8 adverse effect, under the federal scheme, is necessarily
9 an "unreasonable adverse effect" under the state scheme?

10 DIRECTOR MUZZEY: That would be my
11 suggestion. And, when you say "state scheme", it's the
12 Site Evaluation --

13 CHAIRMAN HONIGBERG: Right. Under the
14 Site Evaluation Committee's responsibility.

15 DIRECTOR MUZZEY: Right. Right. So,
16 let me just flip to that page. And, if any Committee
17 members have thoughts on that, I would certainly welcome
18 those as I flip to the next section.

19 There was a Trust concern, in
20 particular, as well as the Alliance concern, again, that
21 the application identify historical resources. And, so,
22 under the criteria relative to findings of unreasonable
23 adverse effects, the Committee shall consider whether the
24 application has identified all historical and

1 archaeological properties potentially affected by the
2 facility, and any anticipated adverse effects to them in
3 consultation with the DHR and the lead federal agency.
4 So, that would be one of the first things that the
5 Committee would consider.

6 And, the second would be similar to what
7 we have as written. The proposed facility utilizes the
8 most effective measures to avoid, minimize, or mitigate
9 any effects, adverse effects.

10 And, then, if the Committee did want to
11 consider, and I do -- I do hope someone will have some
12 thoughts on this, how the Committee will distinguish
13 between "adverse effects" under 106 versus "unreasonable
14 adverse effects" under the SEC determinations. The
15 Committee could consider whether the proposed facility
16 would adversely effect historical and archeological
17 properties to an "unusual or disproportionate degree, such
18 as adversely effecting a large number of historic
19 properties given the scale of the facility, adversely
20 effecting historic properties that have been demonstrated
21 to be rare or unique, or adversely effecting historical
22 properties with demonstrated national significance."

23 Again, this is the idea of what
24 constitutes an "unreasonable adverse effect". And, then,

1 as I believe is already written, again, "consider the
2 status of the applicant's consultations", again, leaving
3 the door open that, if, for some reason, the timing is an
4 issue, that can be considered by the Committee as well.

5 CHAIRMAN HONIGBERG: Does anybody have
6 any thoughts, reactions, questions, regarding Director
7 Muzzey's comments and proposed changes? Commissioner
8 Scott.

9 COMMISSIONER SCOTT: And, I apologize,
10 since I don't really have it in front of me, I was trying
11 to listen to your words. Are you suggesting we actually
12 define "unreasonable adverse effect" with a similar
13 laundry list as the Trust has suggested? And, while
14 you're looking at it, my real question is --

15 CHAIRMAN HONIGBERG: What page of the
16 Trust letter are you referring to?

17 COMMISSIONER SCOTT: I think on Page 2.

18 CHAIRMAN HONIGBERG: Page 2 of their
19 attachment, which is their proposed language?

20 COMMISSIONER SCOTT: Of their
21 attachment, thank you. Because my concern with what they
22 have laid out, and, again, I wasn't clear, Director
23 Muzzey, if that's what you're suggesting, this type of
24 format is. This is a laundry list --

1 DIRECTOR MUZZEY: Uh-huh.

2 COMMISSIONER SCOTT: -- check, check,
3 check, yes or no, yes or no. But I think I would be
4 worried, and maybe the potential applicants would like
5 this, but I would be worried that we'd be tying our hands.
6 So, you've met the checklist. So, even though we may
7 think other things are really unreasonable, they have met
8 the checklist, so, they're good to go. I wouldn't want to
9 tie our hands in that respect.

10 DIRECTOR MUZZEY: Uh-huh.

11 COMMISSIONER SCOTT: Having said that,
12 there would be some balance here, that I think, in
13 rulemaking, people would like to get more clarity. So, I
14 understand that, but --

15 DIRECTOR MUZZEY: Exactly. Well, if we
16 look at Page 2 on the National Trust chart that's attached
17 to their letter, under the -- the bottom right-hand box
18 "unreasonable adverse effect", and then there begins that
19 laundry list you mentioned, 1 through 12, 12 being -- the
20 last of those being on Page 3.

21 Looking at Items 1 through 6, I --
22 definitely 5, perhaps 6, those are the criteria for
23 adverse effect under 106. And, so, those are the criteria
24 that I feel should not be part of the SEC's finding of

1 "unreasonable adverse effect".

2 Whereas the concerns for properties of
3 national significance, such as a national historic
4 landmark, large number of properties impacted given the
5 scale of the facility. Number 9, "substantial public
6 interest or concern" I felt was difficult to define. 10,
7 "impacts to historic sites that would be permanent or
8 irreversible", unfortunately, that happens consistently
9 under Section 106, we seek to mitigate those things.
10 Certainly, "jeopardizing the historic site's listing on
11 the National Register" happens under 106 review, and we do
12 seek to mitigate those.

13 "The impact could lead to a change of
14 ownership that would jeopardize the long-term future of an
15 historic site." Again, I'm not sure about that one
16 either. Because those things are considered "adverse
17 effects" under 106, but not necessarily "unreasonable
18 adverse effects".

19 That's why, for me, I was looking for a
20 different type of effect. Such as a large number of
21 properties given the scale of the facility, affecting
22 extremely rare or unique properties, or adversely
23 effecting properties with a national level of
24 significance.

1 CHAIRMAN HONIGBERG: I also understood
2 you to be saying that you disagree with the general
3 approach that a finding of any of these occurrences
4 automatically means it's an "unreasonable adverse
5 effect"?

6 DIRECTOR MUZZEY: Right. Because
7 that -- well, that also flies in the face of what the
8 Committee discussed earlier this afternoon.

9 CHAIRMAN HONIGBERG: Right.

10 DIRECTOR MUZZEY: So, it would be the
11 Committee considering those things, as opposed to the
12 yes/no checklist.

13 CHAIRMAN HONIGBERG: Commissioner Scott.

14 COMMISSIONER SCOTT: And, if I could,
15 that's where I was going with this, is I'm more
16 comfortable with, rather than trying to define an
17 "unreasonable adverse effect" with these things, I'm more
18 comfortable with the things, and I'd defer to your
19 expertise, that are important be lumped into the overall
20 language in determining whether a proposed facility has
21 "we shall consider these types of things", I'm more
22 comfortable with that, then, again, the checklist approach
23 for what's unreasonable. That was my point.

24 DIRECTOR MUZZEY: Right. And, I

1 certainly agree with that. And, it's also consistent with
2 our other areas of concerns.

3 CHAIRMAN HONIGBERG: Other thoughts or
4 comments?

5 (No verbal response)

6 CHAIRMAN HONIGBERG: And, I'm inclined
7 to agree with Director Muzzey and her adjustments
8 generally to the language that we proposed. Again, not
9 having it in front of me, there may be a word or two that
10 I might play around with.

11 DIRECTOR MUZZEY: Sure.

12 CHAIRMAN HONIGBERG: But that approach
13 seems sound to me. I think I like it better than the
14 extensive rewrite proposed by the National Trust.

15 Other thoughts? Agreements?

16 Disagreements? Director Rose -- Commissioner Rose.

17 COMMISSIONER ROSE: Thank you, Mr.
18 Chairman. It sounded very reasonable to me as well. But
19 it would be something I wouldn't mind just having an
20 opportunity to read through. I'm assuming we'll still
21 have that opportunity at future meetings, based on the
22 fact that we have, I think, three more scheduled, that
23 we'll have a chance to go back and look at something?

24 CHAIRMAN HONIGBERG: Yes. What's going

1 to happen is that a new draft is going to get generated,
2 either at the next meeting, or more likely at the meeting
3 after that, we'll be going through to see if we agree with
4 the changes that have been made. Those changes will be
5 based on the discussions we have been having. And, I
6 think we would take the language, probably Attorney
7 Wiesner will be taking the language that Director Muzzey
8 just read, making sure it's stylistically consistent with
9 everything else we've done, and using that to generate a
10 new draft. Is that right, Attorney Wiesner? Is that what
11 you have in mind?

12 MR. WIESNER: Yes, that is. That's the
13 process. So, the Draft Final Proposal will come before
14 the Committee, and that would be an opportunity to look at
15 the specific language.

16 CHAIRMAN HONIGBERG: Other thoughts or
17 comments? Can we move on to the next topic? Director
18 Muzzey.

19 DIRECTOR MUZZEY: There were some --
20 outside of those two sections, the stakeholders did have
21 other areas of concern, particularly in the "Definition"
22 section. And, have we done the "Definition" section or
23 are we going to loop back to the "Definition" section?

24 CHAIRMAN HONIGBERG: I think we've done

1 some definitions. But I think there's probably more that
2 needs to be discussed. Is that -- I'm getting a nodding
3 of the head from out in the audience there.

4 MR. WIESNER: Some of the definitions
5 are covered in the second half of this document that we're
6 working our way through, and some of them are relevant
7 here. And, some of the Trust comments and the
8 Preservation Alliance's comments as well go to definitions
9 which are relevant to historic sites. For example, on
10 "cumulative impact", this appears on Page 4 of the Trust
11 comments, and a proposal that specific language be
12 included with regard to "historic properties".

13 So, I guess, you know, my personal view
14 is that it may make sense to address those relevant
15 definitions at this time, when we're considering the
16 interplay between federal and state law and historic
17 preservation.

18 CHAIRMAN HONIGBERG: Let's do that then,
19 shall we?

20 (Short pause for members to review
21 comments provided.)

22 CHAIRMAN HONIGBERG: So, we're looking
23 at the definition that's in 102.14, "cumulative impacts".
24 It's laid out on -- in the National Trust's attachment,

1 the bottom of Page 4, is that correct?

2 DIRECTOR MUZZEY: Yes.

3 (Short pause for further review.)

4 CHAIRMAN HONIGBERG: Director Muzzey, do
5 you have thoughts or comments on this definition or --

6 DIRECTOR MUZZEY: My question is, is how
7 have we been referring to "cumulative impacts" throughout
8 the entire rules? Because this applies not only to
9 historic sites, but natural resources, public health and
10 safety, all -- what I think of as "(a) through (f)" in the
11 rules. And, so -- and, I'm wondering if other
12 stakeholders as well weighed in on additions or changes to
13 the "cumulative impacts" definition?

14 CHAIRMAN HONIGBERG: Attorney Wiesner.

15 MR. WIESNER: Well, that is -- the
16 general definition of "cumulative impacts" is teed up as
17 an issue, which we will get to later this afternoon, I
18 hope.

19 DIRECTOR MUZZEY: It's actually the next
20 one, when I flip ahead.

21 MR. WIESNER: Oh, good. One thing to
22 note is that "cumulative impacts" -- the phrase
23 "cumulative impacts" appears in the statute only with
24 respect to wind energy facility siting. And, so, there is

1 a question whether "cumulative impacts" are a proper
2 subject of the Committee's review with respect to other
3 types of facilities? So, that muddies the waters further,
4 because it may well be a part of the federal review that
5 is perhaps in question for SEC review.

6 CHAIRMAN HONIGBERG: Hmm. How helpful
7 was that, Director Muzzey?

8 DIRECTOR MUZZEY: Well, I wish we didn't
9 have that sort of two sets of -- two sets of state law for
10 two -- for different kinds of projects. It would be more
11 helpful to us to be able to think of them holistically. I
12 suggest we skip then the discussion of "cumulative
13 impacts" until we flip the page to number 20, and go on to
14 do much easier things, hopefully. And, we may have
15 covered one of these earlier definitions.

16 The suggestion for definition of
17 "historic site" is at 102.17. The New Hampshire
18 Preservation Alliance has suggested that we include some
19 explanation there, and that would be that "Historic
20 property includes buildings, structures, sites, districts,
21 objects, and rural, designed, traditional and natural
22 landscapes." And, I would certainly agree with that
23 suggestion. It comports with all of the federal guidance
24 as well, and just provides more information to the reader

1 or the applicant.

2 And, then, again, to emphasize the
3 importance of historic landscape, that the definition of
4 "landscape", at 102.19, means the characteristic, visible
5 features of an area including landforms, water forms,
6 vegetation", the suggestion is to add "**historic and**
7 cultural features and all other objects and aspects of
8 natural and human origin." Both a suggestion of the New
9 Hampshire Preservation Alliance and the Trust, and, again,
10 I find that to be a helpful suggestion.

11 CHAIRMAN HONIGBERG: Commissioner Scott.

12 COMMISSIONER SCOTT: Again, I'll defer
13 to your expertise, cultural/historical, aren't they kind
14 of lumped together, and wouldn't we be better served by,
15 if we put "cultural" next to "historical" in one part,
16 don't we need to do it on all or should we just define
17 them altogether?

18 DIRECTOR MUZZEY: Well, we are talking
19 about definitions here. What I have found, in reading
20 aesthetic studies, is that that area also uses the term
21 "cultural features". And, it may not be used in the same
22 way as the field of historic preservation does. And, so,
23 to cover all of our bases, I thought it was better to
24 specify "historic and cultural features", to encompass

1 both areas.

2 CHAIRMAN HONIGBERG: Other thoughts or
3 comments? I think the suggestion to alter the definition
4 of "landscape", I think that's in accordance with the
5 National Trust for Historic Preservation's recommendation
6 as well, is that correct?

7 DIRECTOR MUZZEY: Yes, it is.

8 CHAIRMAN HONIGBERG: I understand the
9 suggestion, and I don't have a problem with it. Others?

10 (No verbal response)

11 CHAIRMAN HONIGBERG: Good. The other
12 definitions you were talking about I didn't find in this
13 document, and I wasn't sure where you were taking it from.
14 The -- I've forgotten now what it was.

15 DIRECTOR MUZZEY: It was the definition
16 of "historic sites".

17 CHAIRMAN HONIGBERG: That's right. And,
18 I do recall having a discussion about the definition of
19 "historic sites" at our first meeting on this topic.

20 DIRECTOR MUZZEY: So, we may have
21 already changed this.

22 CHAIRMAN HONIGBERG: Attorney Wiesner,
23 do you have anything that would help us out here?

24 MR. WIESNER: If we did, I'm not sure we

1 covered this specific issue.

2 CHAIRMAN HONIGBERG: Okay.

3 DIRECTOR MUZZEY: Where -- this is in
4 Attachment B of the New Hampshire Preservation Alliance's
5 recommendations. One, two, three -- fourth paragraph
6 down, "In site 102.17: Add clarity to the definition of
7 "historic"." And, then, there's some explanation as to
8 why, and then "Add this sentence:" And, that's the
9 sentence that I had suggested, that that could be added
10 for adding clarity, as the Preservation Alliance suggests.
11 And, then, what follows is background information about
12 why it comports with federal guidance. Has everybody
13 found that in the Preservation Alliance material? Okay.

14 MS. WEATHERSBY: So, I guess my question
15 would be, does the federal regulation of "historic
16 property" include the -- include "buildings, structures,
17 sites, districts", *etcetera*? And, if so, do we need to
18 add this?

19 DIRECTOR MUZZEY: Well, we've already
20 defined it as it is at 36 C.F.R. 800.16, I believe it's
21 "l", and not "one". If you look into the background
22 material that the attachment goes on to describe, and this
23 is very much in the weeds, federal guidance includes
24 "landscapes" under the term of "sites", that can include,

1 according to federal guidance, both archeological sites,
2 as well as the different types of landscapes. And, so, to
3 add further clarity to that federal definition, the
4 Preservation Alliance is suggesting that we add "as well
5 as rural, designed and natural landscapes", because it's
6 not so apparent from just seeing the word "sites".

7 CHAIRMAN HONIGBERG: Attorney Weathersby
8 is asking, I think, a slightly different question. And,
9 that is, the Preservation Alliance is proposing to include
10 a definition of a defined -- no, a definition of a term
11 used to define another term. It's complex. And, I think
12 she and I now are both wondering, what exactly does 36
13 C.F.R. 800.16(1) actually say? And, you just happen to
14 have it with you.

15 DIRECTOR MUZZEY: I take it everywhere.
16 Would you like me to read it or would you like to read it?

17 CHAIRMAN HONIGBERG: How long is the
18 section?

19 DIRECTOR MUZZEY: Four sentences.

20 CHAIRMAN HONIGBERG: I'd much rather
21 listen to you than read it myself.

22 DIRECTOR MUZZEY: "Historic property
23 means any prehistoric or historic district, site,
24 building, structure, or object included in, or eligible

1 for inclusion in, the National Register of Historic Places
2 maintained by the Secretary of the Interior. This term
3 includes artifacts, records, and remains that are related
4 to and located within such properties. The term includes
5 properties of traditional religious and cultural
6 importance to an Indian tribe or Native Hawaiian
7 organization and that meet the National Register
8 criteria."

9 Remember, this is a national regulation,
10 and so we have federally recognized Indian tribes and
11 Native Hawaiian organizations elsewhere in the country.

12 CHAIRMAN HONIGBERG: But not here?

13 DIRECTOR MUZZEY: No, we don't. To get
14 further into the idea of what a site is, then we have to
15 go into guidance to the National Register of Historic
16 Places. And, it's within that guidance that sites are
17 defined to include both archeological sites, as well as
18 landscapes. And, that's what the background information
19 goes into in the National -- the New Hampshire
20 Preservation Alliance's Attachment B.

21 CHAIRMAN HONIGBERG: Substantively, do
22 you believe that the phrase "historic sites" should
23 include "rural, designed and natural landscapes"? Because
24 I think what you've said and what you've read tells me

1 that that's what's missing from the definition of
2 "historical property", and that's why they want to add it.
3 Is that -- have I got that right?

4 DIRECTOR MUZZEY: I believe, yes.

5 CHAIRMAN HONIGBERG: I wouldn't do it
6 the way they're proposing it. I think I understand what
7 they're trying to do, but I wouldn't do it this way. To
8 try and define a term, put in new phrases, when they're
9 using an existing definition, that just -- it's too
10 confusing to me. And, it's going to be too confusing for
11 a lot of people.

12 What they want to do is say that
13 "historic sites" means "historic property", as that term
14 is defined elsewhere, and also means or includes those
15 things that that definition doesn't include. Not to try
16 to then redefine the term that they have defined.

17 That's --

18 DIRECTOR MUZZEY: I don't think they're
19 redefining the term. They're further clarifying what
20 "sites" means.

21 CHAIRMAN HONIGBERG: Oh. Well, I don't
22 think so, because that's not what it says. Their proposed
23 additional sentence is "Historic property includes
24 buildings, structures, sites, districts, and objects as

1 well as rural, designed and natural landscapes." But they
2 have just told us that "historic property" means what it
3 means in 36 C.F.R. *etcetera*. That just doesn't work for
4 me. I don't have an opinion about the substance of the
5 proposal. But the way they're getting there doesn't work
6 for me.

7 DIRECTOR MUZZEY: Uh-huh.

8 CHAIRMAN HONIGBERG: If you think
9 substantively it's an appropriate term to include in the
10 definition, I'm happy to work to make it -- to make it say
11 that.

12 DIRECTOR MUZZEY: Uh-huh.

13 CHAIRMAN HONIGBERG: Attorney
14 Weathersby.

15 MS. WEATHERSBY: What if we just
16 referenced not only the federal regulation, but also that
17 further clarifying guidance or whatever it was from the
18 National Register, what was the second that you just --

19 DIRECTOR MUZZEY: Uh-huh. The National
20 Register --

21 MS. WEATHERSBY: The National Register
22 Bulletin, --

23 DIRECTOR MUZZEY: Yes.

24 MS. WEATHERSBY: -- if we just

1 referenced both citations?

2 DIRECTOR MUZZEY: That would work as
3 well. Although, I think the hope had been to not have the
4 reader chase down different types of federal regulations
5 and guidance. And, I think these organizations also have
6 a concern for historic landscapes, and would prefer that
7 they be -- that be stated as part of the definition, in
8 order to, you know, make it apparent to everyone that they
9 can be considered "historic" as well.

10 CHAIRMAN HONIGBERG: Then, I really
11 think what they want it -- what they want it to say is
12 "historic" -- as it says now, "'historic sites" means
13 "historic property", as such term is defined in 36
14 C.F.R.", with the specific section, and also includes
15 "rural, designed and natural landscapes", because I think
16 that's what you said was missing.

17 DIRECTOR MUZZEY: I think, as common
18 language goes, that would be -- that would be fine.

19 CHAIRMAN HONIGBERG: All right. I will
20 differ to the lawyers who are looking at the rules as we
21 get the language together. But, if that's what people are
22 comfortable with, that's the direction we should go.
23 Rather than defining terms within terms, or referring to
24 multiple outside documents, because there is a concern

1 Legislative Services won't necessarily like it if we do
2 that.

3 DIRECTOR MUZZEY: Uh-huh.

4 CHAIRMAN HONIGBERG: People okay with
5 that?

6 (Multiple members nodding in the
7 affirmative.)

8 CHAIRMAN HONIGBERG: All right. Good.
9 Anything else about these sections, before we flip the
10 page and go to a different defined term?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: All right. No.
13 So, we're good.

14 So, now, are we on "Cumulative Impact",
15 general definition of "Cumulative Impact"? Now, Attorney
16 Wiesner, did I understand you to say that the only place
17 that phrase exists is in relation to wind projects?

18 MR. WIESNER: In the statute, that's
19 correct. In Section 10-a, the only -- I should say, the
20 only use of "cumulative impacts" in 162-H, which is the
21 SEC statute, is in Section 10-a, which goes to this
22 rulemaking effort for wind energy facilities. So, then,
23 arguably, "cumulative impacts" is not an issue that should
24 be taken up with respect to any other energy facilities,

1 and that's one of the comments that appears here with
2 respect to the definition.

3 (Short pause for members to review
4 comments provided.)

5 CHAIRMAN HONIGBERG: Do people have
6 thoughts or comments? Commissioner Scott.

7 COMMISSIONER SCOTT: For Attorney
8 Wiesner, just to, at least for my mind, to continue that
9 discussion and run it to ground. So, help me here. A
10 differential I see with 162:10-a is that they're
11 explicitly saying "write rules", correct? And, then, they
12 say what the rules should cover.

13 MR. WIESNER: "Write rules to cover the
14 cumulative impacts as applied to the siting of wind energy
15 facilities."

16 COMMISSIONER SCOTT: Correct. So, I
17 just want to -- I want to be clear in my mind. The fact
18 that it's less clear for a gas pipeline that we have, you
19 know, we're writing rules generally, I guess I just want
20 to reaffirm in my mind that the fact that it's explicit
21 under rules for wind, which is already spelled out, were
22 not as spelled out in the RSA 162-H on other facilities,
23 correct?

24 MR. WIESNER: I mean, the use of that

1 defined term in the rules, the current proposed rules,
2 appears where there are additional criteria to be applied
3 to wind energy facility siting.

4 COMMISSIONER SCOTT: Right. But it also
5 talks about, within wind energy, it talks about health and
6 safety impacts, sound impacts, *etcetera*.

7 MR. WIESNER: Well, that's correct.
8 Yes.

9 COMMISSIONER SCOTT: So, again, I'm
10 struggling with, for wind, they were very -- the
11 Legislature was very specific, "here's the things we want
12 you to write rules on." Less specific on other types of
13 facilities, correct?

14 MR. WIESNER: It's not clear whether the
15 Committee has the authority to consider cumulative impacts
16 with respect to other types of facilities. I'll just say
17 that. And, that, I think, is the genesis of the comment
18 that you see here from the Various Energy Companies, where
19 the definition of "cumulative impacts" itself should be
20 restricted to proposed wind energy facilities.

21 Q (By Commissioner Scott:)

22 COMMISSIONER SCOTT: Okay. Thank you.
23 With that, I'll move on, Mr. Chair. I will comment that
24 the Trust, and I think the Preservation -- Historic

1 Preservation group also, they're suggesting language be
2 added regarding "foreseeable future actions". And, it's
3 troublesome for me, because it seems to go outside the
4 scope of what's controllable by the applicant. And, maybe
5 I'm reading too much into their language. But it would
6 almost imply to me, if abutters did something different in
7 the future with their land, that somehow the applicant,
8 you know, if there's a potential for that, somehow the
9 application should be denied. And, I'm not sure how
10 you -- how you evaluate that. I mean, that's -- it does
11 use the word "foreseeable", but I'm just not sure how that
12 works.

13 CHAIRMAN HONIGBERG: Director Muzzey.

14 DIRECTOR MUZZEY: Just to add to the
15 complexity of this, looking at the October 15th, 2014
16 letter from various natural resource organizations, they
17 substituted in a very different definition that is taken,
18 I believe, from NEPA, the National Environmental Policy
19 Act. So, we have a number of options to choose from.

20 CHAIRMAN HONIGBERG: All with the
21 possibility that the only thing that the Legislature means
22 to include is wind.

23 DIRECTOR MUZZEY: Yes.

24 CHAIRMAN HONIGBERG: Mr. Oldenburg.

1 MR. OLDENBURG: Then, I think there
2 might be conflicting issues with the definition of
3 "cumulative impacts". Because, I mean, if you have, if I
4 understand it right, 162-H has that it only -- we're only
5 to make it apply to wind facilities. But, if you go to
6 NEPA, the requirement, at least what we deal with, is it's
7 the total impact of the project. And, if you have to
8 do -- if you have to get environmental approval going
9 through NEPA for any project, you would have to include
10 cumulative impacts. I mean, that's the way I've always
11 understood it. Is you can't just -- you can't just pick
12 and choose what you're going to get the environmental
13 permit for. You have to do a project in totality, whether
14 or not you phase it or not.

15 So, whether it's wind or gas generation
16 or anything, that's -- so, I think there might be
17 conflicting definitions with what the state requirement is
18 and what the federal requirement is. So, I mean, if you
19 have a state requirement, the energy -- the applicant may
20 have to go and do cumulative impacts, whether they're wind
21 or not. That might be an environmental requirement going
22 through NEPA approval.

23 CHAIRMAN HONIGBERG: That doesn't
24 necessarily affect us.

1 MR. OLDENBURG: It doesn't affect us,
2 no. But you may see that they have to do a cumulative
3 impact. So, I don't know how that affects our definition,
4 if we have a requirement that may not coincide with what
5 the NEPA requirement is. So, I don't know if that matters
6 or not.

7 CHAIRMAN HONIGBERG: I think it's -- I
8 think it's fairly clear that the Legislature does want our
9 rules to include cumulative impacts of wind facilities, or
10 for wind facilities, of wind facilities. So, I think we
11 are expected to do that. I don't know if we're expected
12 or authorized to go beyond that.

13 So, as currently structured, am I
14 correct, Attorney Wiesner, that this definition or the
15 only use of it in our rules is in connection with wind?

16 MR. WIESNER: Yes. It is appropriate to
17 consider a definition of "cumulative impacts" that would
18 apply for that purpose, as the Legislature has directed.
19 Whether it's also appropriate to apply it to other types
20 of facilities or to incorporate concepts of cumulative
21 impact analysis that would apply either in a federal EIS
22 process or under Section 106 is something that we should
23 discuss.

24 CHAIRMAN HONIGBERG: But our current

1 draft, under the current draft, the only place where
2 "cumulative impacts" is relevant -- are relevant is in the
3 wind context?

4 MR. WIESNER: That's correct. And, yet,
5 as you see, there are differences of opinion as to how it
6 should be defined and what guidance may or may not be
7 appropriate to draw from federal analogue, such as the
8 cumulative effects under NEPA of the Council on
9 Environmental Quality, as proposed by the AMC.

10 CHAIRMAN HONIGBERG: Director Muzzey.

11 DIRECTOR MUZZEY: I'm looking at
12 162-H:16, "Findings and Certificate Issuance". And, I
13 think it's, unfortunately, not 100 percent clear as to
14 whether "cumulative effects" should be considered. The
15 language at IV(c) reads "The site and facility will not
16 have an unreasonable adverse effect on aesthetics,
17 historic sites, air and water quality, the natural
18 environment, and public health and safety." And, reading
19 that, it's not clear to me whether that can be an
20 unreasonable adverse effect on one of those items or all
21 of those items combined.

22 MR. WIESNER: I think the notion of
23 "cumulative impacts" really goes to "do you consider other
24 facilities that have come before or are currently

1 proposed?" So, for example, if one wind farm is proposed
2 for a particular region, it may have a certain set of
3 impacts. If another one is proposed in close succession,
4 should they be considered together? Do the cumulative
5 impacts of the two together change the analysis of whether
6 either one of them should be certificated by the
7 Committee? And, that's -- that is the thrust of the
8 definition, what is counted toward the cumulative impacts
9 analysis for a wind energy siting.

10 CHAIRMAN HONIGBERG: Mr. Oldenburg.

11 MR. OLDENBURG: And, I think that's what
12 you'll find is the NEPA definition of "cumulative
13 impacts". Is that, if they come in and propose, say, 200
14 turbines, but they're only going to be -- build 50 now, 50
15 in ten years, and 50 some other time, *etcetera*. That they
16 have to study the cumulative impacts of all 200 up front.
17 I mean, that's the way we've always understood the
18 definition of "cumulative impact". You don't -- you have
19 to view the entire project, whether there's -- I'm not
20 sure how the existing -- an existing project falls into
21 it, but my understanding was that that might be two
22 totally -- I don't know if we're trying to split hairs
23 with two different meanings of "cumulative impacts". But,
24 on the federal side, you study the entire project. You

1 don't get to subdivide it, because you're going to phase
2 it. So, that I think is the federal definition, when they
3 talk about NEPA, and "cumulative impacts" as a totality.
4 I think some of these people are reviewing what the
5 federal definition of "cumulative impacts" are.

6 CHAIRMAN HONIGBERG: Attorney Iacopino.

7 MR. IACOPINO: I was just going to
8 answer Director Muzzey's question, at least in the way the
9 statute has been applied by the Committee. A
10 demonstration of unreasonable adverse effect on any one of
11 those criteria would be grounds not to grant the
12 certificate.

13 And, to address the concern raised by
14 the Chairman, as far as the statutory authority, I would
15 just caution some conservatism in coming to a conclusion
16 that, because "cumulative impacts" are included in RSA
17 162-H:10-a, the section of the statute requiring you to do
18 separate and different rules for wind energy systems, and
19 it's not -- and that "cumulative impacts" is not
20 specifically identified in Section VII of 162-H:10, I'm
21 not so sure that the interpretation of those two sections
22 of the statute should lead you to the conclusion that you
23 cannot consider cumulative impacts on -- of facilities
24 other than wind. Because, if you took that, that

1 position, for instance, there's nothing else in the
2 statute about "site decommissioning", yet Section 10-a,
3 regarding wind energy sections, requires there to be
4 regulations for wind energy systems that address site
5 decommissioning. And, you may very well want site
6 decommissioning issues in other types of facilities as
7 well.

8 The same thing, "Site fire protection
9 plan requirements". And, the big one that, actually, that
10 Commissioner Scott mentioned before, "best practical
11 measures to avoid, minimize, and mitigate adverse
12 effects", so, mitigation. So, if we took the
13 interpretation that merely because something is included
14 in Section 10-a, it's excluded from Section 10, I think
15 you might, if you applied that interpretation across the
16 board, you would run into some structural troubles.

17 CHAIRMAN HONIGBERG: No, I understand
18 that. And, I understand the notion that, if we're not
19 precluded from including something about "cumulative
20 impacts", if we felt it was appropriate in carrying out
21 our statutory obligations, we should do it. Just I'm -- I
22 wanted to understand the current state of play. The
23 current state of play is that the only place where the
24 rules have it is with respect to wind, and that there is

1 at least an issue with respect to applying it elsewhere.
2 At this point, we're not even -- the rules don't even
3 attempt to. Attorney Wiesner.

4 MR. WIESNER: I was going to say, in
5 that context, the reference to "cumulative impacts" under
6 Section 10-a refers to cumulative impacts "from multiple
7 towers or projects, or both." So, that goes both to the
8 size of the project and potential phasing, as
9 Mr. Oldenburg referred to, as well as multiple projects.
10 And, the question there is, "which project should be
11 counted in?" Only those which are preexisting or those
12 which have received a certificate or those which have a
13 pending application?

14 CHAIRMAN HONIGBERG: So, having heard
15 all that, does anyone have any thoughts or comments on the
16 proposals from the various groups that appear on Page 24
17 of the comments document?

18 (Short pause.)

19 CHAIRMAN HONIGBERG: Well, I'll take a
20 crack at one comment. I believe that the comment from the
21 AMC, while helpful guidance, I'm not sure is necessary to
22 be placed in rules. I think people know generally, who
23 are in this field, what NEPA "cumulative impact" means,
24 and how people should be analyzing cumulative effects,

1 cumulative impacts.

2 I think the more interesting question
3 is, what types of projects or proposals or how founded do
4 they have to be before they have to be included? There's
5 one comment here that anyone who's "spent more than
6 \$10,000", that needs to be included.

7 At the other end, there's a suggestion
8 that the phrase "and all proposed energy facilities for
9 which an application has been accepted" be strick,
10 strucken, stricken, struck -- what is the word, "struck"?

11 DIRECTOR MUZZEY: Deleted.

12 COMMISSIONER SCOTT: Removed.

13 CHAIRMAN HONIGBERG: Thank you.

14 MS. WEATHERSBY: Deleted.

15 CHAIRMAN HONIGBERG: Take it out of
16 there. So, where do people want to go with that?
17 Mr. Oldenburg.

18 MR. OLDENBURG: I guess, if it's our
19 charge, and the Legislature said "this only applies to
20 wind energy", --

21 CHAIRMAN HONIGBERG: Don't assume that.
22 If you think that's the right answer, go for it. But
23 don't necessarily assume that.

24 MR. OLDENBURG: Then, I'm stumped,

1 because I was going to go that way.

2 CHAIRMAN HONIGBERG: For purposes of
3 your comment, we're going to assume that we're only
4 applying it to wind. So, go ahead.

5 MR. OLDENBURG: So, then, I would think
6 the Various Energy Companies, their inclusion of the words
7 "wind energy facility" would make sense. To limit the
8 cumulative impacts to apply to only wind energy
9 facilities.

10 CHAIRMAN HONIGBERG: Other thoughts?
11 Comments? Attorney Weathersby.

12 MS. WEATHERSBY: I think it applies to
13 "all energy facilities", and "energy facilities" is
14 further defined in 102.15. So, I would be in favor of
15 leaving it the way it is, taking out "wind energy", as
16 suggested by the Various Energy Companies.

17 And, as for the timing and what should
18 be -- which projects should be -- which facilities should
19 be included in the cumulative impact assessment, you know,
20 I'm wondering if it should be a little broader, or whether
21 it's okay as "accepted". I mean, should it be when
22 something is submitted to us, rather than the time we've
23 accepted it? I mean, at some point, they get -- the horse
24 is out of the barn and everybody knows about it.

1 CHAIRMAN HONIGBERG: One thing to keep
2 in mind is that, under the new statute, applicants have to
3 do a pre-filing set of public hearings. And, so, you
4 might -- that might be a right time. If you've got
5 somebody out there kicking the tires on a plan, maybe
6 that's enough information to require that it be included,
7 that the effects of all of them be included. I don't
8 know.

9 Commissioner Scott.

10 COMMISSIONER SCOTT: I'm probably not
11 going to help the discussion by saying this, but I am not
12 convinced by, and that's kind of where I was going with
13 Attorney Wiesner before, that just because "cumulative
14 impacts" happens to be mentioned in the laundry list for
15 wind, that it precludes anything, you know, it being
16 looked at from other facilities. So, the next question
17 would be, "if that is correct, do we want to" --

18 CHAIRMAN HONIGBERG: If which is
19 correct?

20 COMMISSIONER SCOTT: If that --

21 CHAIRMAN HONIGBERG: If we're allowed to
22 apply it to others, --

23 COMMISSIONER SCOTT: Other energy
24 facilities.

1 CHAIRMAN HONIGBERG: -- should we? Is
2 that --

3 COMMISSIONER SCOTT: Correct.

4 CHAIRMAN HONIGBERG: That's the question
5 you want to talk about right now?

6 COMMISSIONER SCOTT: Yes. I told you
7 this might may not be helpful.

8 CHAIRMAN HONIGBERG: Well, is there any
9 way we can resolve the other one first? Attorney Wiesner.

10 MR. WIESNER: Well, I was just going to
11 say, it may be useful to just focus on the definition of
12 "cumulative impacts" as it would apply to wind energy
13 facilities. And, then, if we have a definition -- without
14 having the definition itself limited on its terms in that
15 way. And, then, we can decide how the term might be used
16 in other ways throughout the rules. Currently, it's only
17 used in connection with wind energy facility siting, and
18 not in connection with other types of projects.

19 CHAIRMAN HONIGBERG: I was thinking the
20 same thing. Let's see if we can get the definition,
21 before we -- before we see where else it applies. And, in
22 that, I would not -- I would have it the way it is in the
23 proposal, not by its own terms self-referencing to wind.
24 So, I would not be supportive of the Various Energy

1 Companies' proposal. I want to keep the definition
2 cleaner than that, and decide separately what it applies
3 to.

4 I am still struggling with what
5 non-projects should be included in the cumulative
6 assessment. I mean, it's a real challenge to know what's
7 actually going to happen. There are dozens of ideas
8 people have that are floating out there. In fact, my
9 office has binders in it from projects that aren't going
10 anywhere. They were filed, and they have not gone
11 anywhere. So, should anybody worry about one of those?
12 Well, I'm not sure that they should. In fact, I think
13 they shouldn't. So, I don't know. Make me an offer?

14 COMMISSIONER SCOTT: Mr. Chair.

15 CHAIRMAN HONIGBERG: Commissioner Scott.

16 COMMISSIONER SCOTT: In that context, I
17 am actually fine with the language as originally proposed
18 in the draft.

19 CHAIRMAN HONIGBERG: It does have a nice
20 black-and-white quality to it, doesn't it?

21 Does anybody have any other thoughts or
22 reactions to that? I know, Attorney Weathersby, you
23 thought maybe we should go a little broader.

24 MS. WEATHERSBY: I don't know the point

1 at which the scope of a project is defined and made
2 public. And, I think, whatever that time, you know, it's
3 going to be nine turbines, or it's going to have six
4 smokestacks emitting this, you know, whatever it is, at
5 the time that the scope of the facility is -- physical
6 facility is determined and made public to this Committee,
7 I think that should be the time. And, I don't know when
8 that is.

9 CHAIRMAN HONIGBERG: I mean, I think
10 "accepted" then is the right place. Because I think the
11 pre-filing events largely are defined like that, but I am
12 fairly certain that what is contemplated by that process
13 is that, in response to public comments, applicants may
14 adjust their plans before ever filing. And, so, that
15 "acceptance" place is one that is easily identifiable, and
16 would get you to -- it's certainly at the point where
17 people know what they're proposing, and others could find
18 it out, because it's a public document.

19 Anyone see any problems with that?
20 Attorney Iacopino, are there any problems with that spot
21 in the process? That's the language essentially as it
22 is -- that's the language as it is in the draft that we
23 have out there.

24 MR. IACOPINO: Right. I don't think

1 there's any legal problems with it. I do think that
2 consideration, when given to applicants, they start
3 planning these projects long before the application is
4 ever presented to the Committee. So that it does -- I
5 pose it imposes an additional burden on them, but you
6 just -- I mean, it's really a policy decision for the
7 Committee on where you're going to draw the line, is
8 really what it boils down to.

9 CHAIRMAN HONIGBERG: Well, where in the
10 process are cumulative impacts included? Are they an
11 application requirement to analyze cumulative impacts? Or
12 are they in the criteria for approval or disapproval?
13 Where is the term used again?

14 (Short pause.)

15 MR. IACOPINO: I think the answer to
16 your question, Mr. Chairman, and Mr. Wiesner is going to
17 keep looking, but the answer to that I may be able to find
18 very quickly, is that the Legislature, in Section 10-a of
19 162-H, has required you to issue regulations relative to
20 the siting of wind energy systems that address "cumulative
21 impacts to the natural, scenic, recreation, and cultural
22 resources from multiple towers or projects, or both."

23 So, I assume, when you take that and you
24 compare that with RSA 162-H:16, the criteria to grant a

1 certificate, that there's a suggestion that those
2 cumulative impacts must be considered when you're
3 considering whether there's an adverse -- unreasonable
4 adverse impact on aesthetics, the historic sites, cultural
5 resources, "recreational" would probably come under
6 orderly development of the region.

7 CHAIRMAN HONIGBERG: I appreciate that.
8 The question is, where did we put it in the draft rules?

9 MR. IACOPINO: Oh.

10 CHAIRMAN HONIGBERG: Did we put it as an
11 application requirement? Or, does it only appear in the
12 later section about determining what is or isn't
13 approvable?

14 MR. IACOPINO: That's -- Mr. Wiesner is
15 still looking, but we're not finding it very quickly here.

16 CHAIRMAN HONIGBERG: We are due to take
17 a break soon anyway. I believe that this document is in a
18 word processing system somewhere in this office. And, so,
19 we're going to see if we can figure out where it's used.

20 (Short pause.)

21 CHAIRMAN HONIGBERG: Well, we're going
22 to see if we can figure out where it's used. But, for
23 other reasons, reasons having to do with internal PUC
24 business, Commissioner Scott and I have to do something at

1 3:15. So, we're going to move to something else for 15
2 minutes. And, during the next break, we'll figure out
3 this question.

4 So, let's put aside "cumulative
5 impacts", fun as it has been, and we'll come back to it
6 after the break.

7 The next topic -- off the record.

8 (Brief off-the-record discussion
9 ensued.)

10 COMMISSIONER SCOTT: Attorney Wiesner,
11 if you could look at Site 301.15 -- actually, on 16,
12 excuse me, 16(a), and there may be other places, but it
13 references it under 301.16(a).

14 MR. WIESNER: And, we'll check, but that
15 may be the only place, and that's siting criteria. So, --
16 and, one of the things that the Committee ought to
17 consider, and going a little off here, but, you know, if
18 that's a criteria that should be considered in order to
19 site a wind facility, and the Legislature has said that it
20 should be, you know, should there be an application
21 requirement that ties into that? Which I think was the
22 question that was presented earlier.

23 And, if it's in there, I wasn't able to
24 find it. So, that may just be an oversight. And, I think

1 that, if it is going to be covered as an application
2 requirement, that makes it a little bit more difficult for
3 timing purposes, as Attorney Iacopino suggested, given the
4 fact there's a long lead time for the necessary studies
5 that have to be performed by potential applicants. So, if
6 two applicants are coming here with an application in
7 roughly the same timeframe, it's quite possible that
8 neither one has studied the other, because they were not
9 aware of the other, or exactly what their plan was. And,
10 I think that's the impetus for what appears here as the
11 EDP comment, which would delete the reference to
12 "applications for which the Committee has accepted" and
13 docketed the proposal.

14 COMMISSIONER SCOTT: And, if I could add
15 to that, it's not impossible you could have competing
16 projects. For instance, for a transmission reliability
17 project, you may have competing projects who, again, only
18 one of them is going to be built. So, that's another
19 consideration.

20 MR. WIESNER: And, that might be an
21 easier case, because I suppose either one could study
22 itself, and assume the other one wouldn't be there, and
23 then it would sort themselves out.

24 But it's quite likely that there could

1 be other scenarios where multiple wind projects, for
2 example, are proposed, and they would be in sight of each
3 other, but they may not be known to each other at the time
4 when they're doing the pre-application studies.

5 CHAIRMAN HONIGBERG: Right. So, of
6 course, we couldn't expect them to put anything in their
7 application and deem their application inadequate because
8 they failed to analyze something they didn't know anything
9 about.

10 MR. WIESNER: Right.

11 CHAIRMAN HONIGBERG: But that doesn't
12 mean that, during the course of the proceeding, we
13 wouldn't expect them to analyze, in the course of their
14 representative proceedings, they wouldn't have to analyze
15 each other.

16 MR. WIESNER: That's correct. And, that
17 probably argues in favor of, if the broader definition is
18 to be retained, that cumulative impacts perhaps is not
19 something that would be an application requirement, but
20 could be an issue that's developed through testimony or
21 through successive submissions during the proceeding,
22 during your consideration.

23 CHAIRMAN HONIGBERG: I'm feeling like
24 that's the direction we need to go here. Because, if it

1 hasn't been -- if it's not a matter of public record, how
2 are they likely to know about it? And, even if they learn
3 of it, it becomes a matter of public record, you know, a
4 week before they feel like they're ready to go public, I
5 mean, that's -- they could still go forward, if it's not
6 an application requirement, they could get theirs in
7 there, too. And, then, they would be analyzing -- they
8 would have to analyze each other, if they had an effect on
9 each other. And, I --

10 MR. WIESNER: So, that argues in favor
11 of not making an application requirement, if accepted
12 applications are going to be included within the
13 definition of "cumulative impacts".

14 CHAIRMAN HONIGBERG: Right. That's
15 correct. And, as I'm sitting here right now, that's what
16 I think is the right answer.

17 MR. WIESNER: And, then, the expectation
18 or perhaps even a requirement reflected in the rules would
19 be that there would be subsequent submissions that address
20 the cumulative impacts of those projects, which need to be
21 considered by each proponent.

22 CHAIRMAN HONIGBERG: Right. Other
23 thoughts or comments?

24 (No verbal response)

1 CHAIRMAN HONIGBERG: All right. So,
2 should it also be -- should the cumulative impacts also
3 apply to non-wind facilities? Commissioner Scott.

4 COMMISSIONER SCOTT: I'm thinking yes.
5 And, I can think of an example. For instance, you have a
6 gas-fired electric generating unit, who, as part of that
7 project, the associated -- making this a hypothetical,
8 obviously, but the associated gas pipeline now needs to
9 put a compressor station in the same town in order to feed
10 that, yet, they're two different projects. I could see
11 them perhaps being in the same viewshed, the same --
12 adding collectively to the same noise restrictions in the
13 town, *etcetera*. I'm not sure why we wouldn't want to look
14 at that.

15 Again, it's somewhat problematic,
16 understanding what -- the hypotheticals of what may be
17 coming down, which I certainly don't think we should ask
18 any applicant to look to the future. But, for what's on
19 the books, if you will, I think that's logical.

20 So, it strikes me that that ought to be
21 a consideration. How far we require them to demonstrate
22 something is a whole nother issue, I think.

23 CHAIRMAN HONIGBERG: I agree with that.
24 I think, in many, if not most, circumstances, there's not

1 going to be any cumulative impacts. It's going to be a
2 single proposal in a single area, and that's what you've
3 got. Occasionally, you might have multiple things, but
4 it's -- but I have no problem with including the concept
5 as it would apply to other types of facilities. Makes
6 perfect sense to me.

7 All right. So, we're going to need then
8 to include an analogous section for other types of
9 facilities as 301.16. Or, maybe it is to eliminate 301.16
10 and make a more general section. But that's a drafting
11 question we can address at another time.

12 Attorney Wiesner, you look concerned.

13 MR. WIESNER: I just wanted to see if
14 there was anything else in 301.16, and the other issue is
15 "best practical measures".

16 CHAIRMAN HONIGBERG: Yes, I know. I
17 mean, we'll have to decide what to do with that section.

18 MR. WIESNER: Right. Right.

19 CHAIRMAN HONIGBERG: But, just focusing
20 on the wind aspect -- I'm sorry, on the cumulative aspect
21 of it, I think I see those two different ways to deal with
22 it. Either to create an analogous section or take this
23 section out and make it a section of general
24 applicability.

1 MR. WIESNER: Yes. It will be necessary
2 then to include the concept of "cumulative impacts
3 analysis" in the general siting criteria for all energy
4 facilities. And, it may read differently than what
5 appears here for wind, or perhaps not. I mean, that's an
6 issue we can take up, I suppose. There are references
7 here to "combined observation, successive observation",
8 but that could apply to other types of facilities as well.

9 CHAIRMAN HONIGBERG: Okay. Is there
10 anything else you want to talk about with respect to
11 cumulative effects?

12 (No verbal response)

13 CHAIRMAN HONIGBERG: Good. Now, let's
14 turn the page, to "Monitoring and enforcement".

15 (Short pause for members to review
16 comments provided.)

17 CHAIRMAN HONIGBERG: Any thoughts or
18 comments on Section 302, "Enforcement of Terms and
19 Conditions"?

20 (Short pause.)

21 MS. WEATHERSBY: So, I think there's
22 sort of two issues here with the suggestion by McPhaul
23 concerning prior notice. As I read 302, it appears to
24 apply only to a facility after a certificate has been

1 granted. And, he is suggesting or she is suggesting that
2 it also be given access during construction. And, then,
3 there's the issue of notice. Right now, a
4 certificate-holder needs to "provide full access...at
5 reasonable times", under "reasonable conditions". And,
6 they're asking for, you know, "no notice", which I guess
7 would be a condition. And, the question I think is
8 whether that providing notice is a reasonable condition?

9 And, I don't know if there's safety
10 reasons that notice should be given or, you know, is "no
11 notice" a good idea? And, I guess I would defer to you
12 folks as to how these things are run, whether that might
13 be acceptable.

14 CHAIRMAN HONIGBERG: Well, let's take
15 the two issues separately. I'm not sure the premise --
16 the first premise is correct. This section does apply
17 during construction, does it not?

18 MR. WIESNER: Yes. I think this is, you
19 know, a certificate has been issued, and then there's
20 monitoring/enforcement that would include the construction
21 period, I believe, prior to operation.

22 CHAIRMAN HONIGBERG: Now, what about the
23 second, the "no notice" idea? Director Muzzey.

24 DIRECTOR MUZZEY: I have this thin

1 memory of a discussion by this Committee of this topic
2 before, particularly as it related to whether notice or
3 not was appropriate. And, at that time, Commissioner
4 Burack had a fairly strong opinion as to how that should
5 work, given his experience in investigating other
6 potential violations of, probably, the state permitting
7 coming out of DES.

8 And, I've quickly looked back through my
9 notes, and I can't find when we talked about that. Do you
10 have or does anyone have a memory of that as well?

11 CHAIRMAN HONIGBERG: I know that we had
12 an extensive discussion of this set of sections in between
13 the Initial Proposal and the Final Proposal. And, there
14 were changes made from the Initial Proposal to the Final
15 Proposal, I know, in response to some of Commissioner
16 Scott's comments, regarding due process to the applicants.

17 I don't remember Commissioner Burack's
18 comments. But I also think you're probably right, I think
19 he did.

20 Attorney Wiesner, any thoughts or
21 memories on this one?

22 MR. WIESNER: I think that's consistent
23 with my recollection as well. Which is, prior to the
24 adoption of the Initial Rules Proposal, there was a

1 discussion at which this, I'm looking at 302.01(c), which
2 is the notice requirement, "five days prior written
3 notice, except in the case of an emergency". Then, I
4 believe the next clause originated with Commissioner
5 Burack, which is, "based on -- if, "based on credible
6 information a violation has occurred and is or may be
7 ongoing, then no prior notice is necessary." And, I
8 believe that's the way the DES operates. If they think
9 there's a violation underway, they will just come and
10 inspect. And, I think that change was made based on his
11 comment.

12 And, so, what we're talking about here
13 is a situation where there would be an inspection of the
14 site, without any, you know, probable cause, if you will,
15 to believe that there has been a violation or that one is
16 occurring.

17 DIRECTOR MUZZEY: Could you just repeat
18 where you were reading that. What section again?

19 MR. WIESNER: This is -- it's in Site
20 302.01, Subsection (c). And, this appears, sorry, this
21 appears on Page 18 of the Initial Proposal.

22 DIRECTOR MUZZEY: Dated December 22nd?

23 MR. WIESNER: Yes.

24 DIRECTOR MUZZEY: Thank you.

1 MR. IACOPINO: I would just point out
2 that RSA 162-H:4, III, statutorily defines the authority
3 of the Committee to go into a facility. And, says that
4 "Any authorized representative or delegate of the
5 committee shall have a right of entry onto the premises of
6 any part of the energy facility to ascertain if the
7 facility is being constructed or operated in continuing
8 compliance with the terms and conditions of the
9 certificate."

10 The next sentence says "During normal
11 hours of business administration and on the premises of
12 the facility, such a representative or delegate shall also
13 have the right to inspect such records of the
14 certificate-holder as are relevant to the terms or
15 conditions of the Certificate."

16 CHAIRMAN HONIGBERG: Commissioner Scott.

17 MR. IACOPINO: I think that authorizes
18 you to do that without notice. There's no requirement of
19 notice in there.

20 CHAIRMAN HONIGBERG: Commissioner Scott.

21 COMMISSIONER SCOTT: That's actually
22 very good, because that's where I was going, I think. I
23 find it perplexing that we would, on a normal course of
24 events, we would give five days -- have to give five days

1 written notice before we would have somebody show up for
2 an inspection. That seems to me a bit much.

3 I think it's a good practice, if we go
4 out for an inspection, to make sure somebody is going to
5 be there that can answer your questions, *etcetera*. But,
6 to have a five day written notice requirement seems to me
7 a bit much.

8 I'm just trying to remember, my memory
9 is very hazy on this, I'm trying to remember where that
10 came from, as to how that got in there. I don't know, is
11 that -- maybe Attorney Wiesner could help me?

12 CHAIRMAN HONIGBERG: I just got a
13 reminder, Commissioner Scott and I have to take a break
14 pretty much right now. It's a good opportunity, I think,
15 to give Mr. Patnaude a break as well. So, we'll come back
16 in 15 minutes, at about half past.

17 (Recess taken at 3:16 p.m. and the
18 meeting resumed at 3:37 p.m.)

19 CHAIRMAN HONIGBERG: All right. When we
20 broke, I basically cut Attorney Wiesner off in
21 mid-sentence, so -- because we really had to go upstairs.
22 And, I got to tell you, being here was actually not so
23 bad, given what Commissioner Scott and I had to deal with
24 upstairs. So, where were we, Attorney Wiesner?

1 MR. WIESNER: Well, I think you were --
2 Mr. Chairman, I believe you were asking what the origin of
3 the "five day prior written notice" requirement was, for
4 what I would call "routine" inspections, where there's no
5 suspicion, no reasonable, credible basis, as the rule --
6 as the proposed rule reflects, to think that there's an
7 instance of non-compliance. So, it's just a routine
8 inspection, "let me come out and take a look at how things
9 are going with the construction or the operation of the
10 facility."

11 And, I think the belief was that, in
12 that instance, it was appropriate to have some sort of
13 prior notice requirement, in part, to make sure that
14 somebody would be there to provide access to the facility.
15 Which may not be the case, even with a wind farm,
16 certainly may not be the case with respect to, you know,
17 transmission substations or something like that. So, I
18 think that was the genesis of it. I can't tell you
19 exactly why "five days" was selected as the appropriate
20 time period. And, it certainly could be shorter, I would
21 think.

22 CHAIRMAN HONIGBERG: Commissioner Scott.

23 COMMISSIONER SCOTT: And, similarly, I
24 assume why it has to be "written notice", you don't have

1 any great guidance on that?

2 MR. WIESNER: Only to provide, I mean,
3 the best argument for that, I suppose, is to provide a
4 written record that the rule was complied with.

5 COMMISSIONER SCOTT: Okay. So, the
6 language as written right now, in the draft, it's
7 concerning to me, for a couple reasons, as I mentioned,
8 before we took a break, I think it's good practice, and
9 when I used to be involved with enforcements and
10 inspections, we always, unless there was an active
11 complaint, we wanted the right people to be there, so, we
12 called ahead, if you will. And, there's a lot of good
13 reasons for that.

14 But, having said that, I'm trying to
15 think of things from a project that maybe want to be
16 looked at. The location of things is not something that,
17 without notice, is going to change. But there are other
18 issues, for instance, noise issues, where you may not have
19 an active complaint, but, for whatever reason, I could see
20 the administrator wanting to check, do a drive-by, if you
21 will, and check and see if noise is an issue, that type of
22 thing.

23 So, I'm a little bit struck that you
24 basically have to have a credible -- it says "based on

1 credible information that a violation has occurred". So,
2 I'm wondering if that's too narrow. So, if I'm the
3 administrator, and I want to check on compliance,
4 something that perhaps does not need the applicant Staff
5 to be there, but I need to go on site safely, etcetera.
6 I'm just struggling with why we need to be that
7 prescriptive and tie our own hands, given the public
8 interest involved.

9 So, I would argue that, I think, as a
10 minimum, we'd want to loosen up the conditions by which we
11 could do such things. And, again, I think "five days
12 written notice" to be in the rule is overly prescriptive
13 and overly constraining on the administrator.

14 CHAIRMAN HONIGBERG: Other thoughts or
15 comments? People agree/disagree with Commissioner Scott?
16 Commissioner Rose.

17 COMMISSIONER ROSE: Thank you, Mr.
18 Chairman. I'm not -- I feel as though, as you referenced,
19 it's, you know, good common courtesy to try to give a
20 heads up. And that, if you are going to inspect something
21 like noise, you know, would that be something -- oh, I
22 guess this is kind of in the terms of -- I mean, I guess
23 my instinct was, it seems like it's fairly reasonable to
24 give that heads up. And, five days seems appropriate.

1 But I guess I would just -- I think I'm
2 comfortable with it as is. If you were -- I guess, if you
3 were thinking about the written notice, as opposed to like
4 an e-mail or something along those lines, I don't know if
5 that would be -- if you want to take out the word
6 "written"? But I just -- I think you would be able to --
7 you should be able to access, and I think it was
8 referenced earlier, that you can access the property, if
9 you were looking to -- if you thought there was any sort
10 of a violation that was taking place, which could include,
11 you know, noise violations. So, I feel as though that
12 it's fine as it currently is written.

13 CHAIRMAN HONIGBERG: Other thoughts?
14 Attorney Weathersby.

15 MS. WEATHERSBY: I agree that five days
16 seems too long. I think "24-hour" or "48-hour" or
17 something would be, in today's day and age, you know,
18 should be sufficient.

19 CHAIRMAN HONIGBERG: So, we have that
20 suggestion. And, what do people think of that?

21 (Short pause.)

22 CHAIRMAN HONIGBERG: People don't feel
23 strongly about this, I think. Director Muzzey.

24 DIRECTOR MUZZEY: I do think it would be

1 wise to either remove "written" or make it more expanded
2 to include things such as "e-mail", because that's how
3 much state business is done, and we're encouraged to do
4 State business that way.

5 You know, with the "day" question, you
6 know, there's also the idea of "are we talking about
7 business days or weekly days?" I would assume "24 hours"
8 would be a more common type of notification period than
9 "five days".

10 CHAIRMAN HONIGBERG: I don't really have
11 a problem with that. That's fine. Mr. Oldenburg.

12 MR. OLDENBURG: Just a clarification.
13 We're still talking about the "five day notice",
14 302.01(c). Is that the same location?

15 CHAIRMAN HONIGBERG: I think that's what
16 we're talking about, yes.

17 MR. OLDENBURG: Okay. So, that talks
18 about that there's a "credible information that a
19 violation has concurred". So, wouldn't you want a
20 certified letter or something, you would want written
21 notification that you're going to inspect or --

22 CHAIRMAN HONIGBERG: I think you've
23 got -- the first part of that section is that it says
24 "except in the case of an emergency" or where you think

1 there's a violation.

2 MR. OLDENBURG: Oh. Okay. All right.

3 CHAIRMAN HONIGBERG: In other
4 circumstances, --

5 MR. OLDENBURG: In other circumstances.

6 CHAIRMAN HONIGBERG: -- the idea is
7 you're supposed to give notice.

8 MR. OLDENBURG: This is routine.

9 CHAIRMAN HONIGBERG: It's the routine.

10 MR. OLDENBURG: Okay. All right.

11 CHAIRMAN HONIGBERG: I really don't feel
12 strongly about this. If you want to make a change, that's
13 fine. I mean, I suspect Commissioner Burack may have some
14 opinions on this the next time he sees it.

15 COMMISSIONER SCOTT: I have a
16 suggestion.

17 CHAIRMAN HONIGBERG: Yes, Commissioner
18 Scott.

19 COMMISSIONER SCOTT: So, having said all
20 I said, my suggestion frankly is that we delete Section
21 (c) in its entirety.

22 CHAIRMAN HONIGBERG: Oh, my. There's a
23 radical proposal. Let's take a look at what that would
24 mean.

1 COMMISSIONER SCOTT: And, in my
2 estimation, all that would do is remove the requirement to
3 provide advance notice. Again, I think, as a practical
4 matter, to do inspections on facilities generally, it's
5 the right thing and smart thing to do to provide notice.
6 But the worse thing that happens, in my view, is an
7 inspector, or, in this case, the administrator goes to the
8 site, the appropriate people aren't there, or they're
9 barred, perhaps, depending on the facility, because of
10 safety issues. And, then, they readdress that. I think
11 that's all -- I don't see a need for any of that to be
12 constrained by a rule saying "this is exactly how you do
13 that."

14 CHAIRMAN HONIGBERG: You know, my
15 concern there, and I would defer to people who have been
16 involved in enforcement-type actions as regulators, that,
17 if you want to go and you think there's something going
18 on, and you get -- you get stiff-armed by the owner saying
19 "this is not a reasonable time for you to come." And, so,
20 unless you have that first provision of (c), you're in an
21 argument with the owner about whether you can get on the
22 property, I fear, but I don't know that for sure.

23 Attorney Iacopino, you look like you
24 want to say something.

1 MR. IACOPINO: Your statute gives you a
2 right-of-entry on the property.

3 CHAIRMAN HONIGBERG: Yes. You read that
4 a minute ago, didn't you?

5 MR. IACOPINO: Yes. Yes. I mean, just
6 as Counsel to the Committee, I don't know why you would
7 try to limit that. You certainly may want your employees
8 to be respectful of your regulated entities and also to
9 exercise courtesy. But I don't know why you would create
10 a rule that you will then have to abide by that would
11 limit your ability to inspect or enter the property.

12 CHAIRMAN HONIGBERG: I'm actually a
13 pretty big believer in not putting in rules things that
14 are already in statute. Because you inevitably, unless
15 you repeat them word-for-word, which seems like kind of a
16 waste of time, you inevitably do something different, and
17 then there's a question about what you're required to do.

18 Mr. Oldenburg.

19 MR. OLDENBURG: Just a clarification of
20 why I thought that it meant a "violation", is the heading
21 of that whole Section 302.01 is "Determination of
22 Certificate Violation". So, I thought that applied if you
23 had a violation. It's like (c) doesn't even apply there.
24 Because, if there's no violation, why is it under that

1 section? That's a routine -- it's almost like a routine
2 inspection.

3 CHAIRMAN HONIGBERG: I think
4 Commissioner Scott's with you. He's ready to delete
5 paragraph (c).

6 MR. OLDENBURG: I would agree.

7 MS. WEATHERSBY: I'm wondering if you
8 want to -- if we want to delete (b) as well, since we have
9 the statutory authority to go in at any time?

10 CHAIRMAN HONIGBERG: I can easily be
11 talked into that. Anything else we want to take out while
12 we're here?

13 MR. WIESNER: I remember, back in
14 December, we added this language, if I'm remembering
15 correctly. That there was an interest that we wanted
16 there to be a provision in rule that said that the
17 certificate-holder would have to provide access. One of
18 the things that may be troubling here is the reference to
19 "reasonable times" and "reasonable conditions". And, if
20 there's going to be no notice requirement, then, again, I
21 believe, Mr. Chairman, you raised the issue that we don't
22 want to get out there and then be told, you know, "it's
23 not reasonable for you to come here without notice." So,
24 perhaps we want to delete that provision.

1 CHAIRMAN HONIGBERG: Attorney Iacopino,
2 would you do us a favor and read the statutory section
3 again please.

4 MR. IACOPINO: Sure. "Any authorized
5 representative or delegate of the committee shall have a
6 right of entry onto the premises of any part of the energy
7 facility to ascertain if the facility is being constructed
8 or operated in continuing compliance with the terms and
9 conditions of the certificate. During normal hours of
10 business administration and on the premises of the
11 facility, such a representative or delegate shall also
12 have the right to inspect such records of the
13 certificate-holder as are relevant to the terms or
14 conditions of the certificate." I interpret that to mean
15 you can go on at any time, but you can only inspect the
16 records during business hours.

17 CHAIRMAN HONIGBERG: And, that's two
18 sentences, right?

19 MR. IACOPINO: Yes. That was two
20 sentences, I'm sorry. Last time, I actually said "the
21 next sentence states", yes. So, the second sentence
22 starts "During normal hours of business administration and
23 on the premises of the facility, such a representative or
24 delegate shall also have a right to inspect such records".

1 CHAIRMAN HONIGBERG: I'm not sure what
2 (b) does for us. I'm not sure what (c) does for us at
3 this point.

4 MR. IACOPINO: The only thing I would
5 suggest about (b) is it doesn't -- (b) does not limit you.
6 And, if you were to cut it off just before the "reasonable
7 times", it's just another place for the regulated entity
8 to know what's required of it. I mean, I guess it doesn't
9 make much of a difference either way, but it's just
10 another place, if somebody is looking in the rules first,
11 as the inspector is knocking on the door. But that's a --

12 CHAIRMAN HONIGBERG: Yes. I mean, I at
13 least think we should delete the last phrase, the
14 reference to "reasonable times and subject to reasonable
15 conditions". All right. So, everybody wants to delete
16 that phrase. And, we can delete (c). And, then, when
17 Commissioner Burack sees this, he'll try to explain to us
18 again why this language was something he wanted.

19 There are comments here about "failure
20 to correct" and what should happen. My view is that these
21 sections are pretty comprehensive. This is pretty
22 standard administrative enforcement language. That, if
23 there's a violation, after notice and an opportunity to be
24 heard, there are levels of sanctions here, up to and

1 including revocation of the certificate.

2 Is that -- does anybody else have a
3 different view?

4 (No verbal response)

5 CHAIRMAN HONIGBERG: Seeing none.
6 There's a suggestion in the other direction, with respect
7 to a provision that I think is the next provision after
8 the ones we were just talking about, that says "If the
9 person holding the certificate has failed or neglected to
10 terminate a specified violation within 15 days after
11 receipt of the notice and order issued pursuant to (a)
12 above, the committee shall commence a proceeding to
13 suspend the person's certificate." And, the comment we
14 have is that, "if the certificate holder has provided a
15 cure plan deemed sufficient by the SEC, then the SEC
16 shouldn't be required to commence the suspension
17 proceeding." That's how I interpret this.

18 Commissioner Scott.

19 COMMISSIONER SCOTT: I concur. Again,
20 I'm back to not trying to tie our hands too much, another
21 hypothetical. So, let's say the facility located
22 something not within the Certificate. So, it's 20 feet
23 from where it should be. Likely, that's not going to be
24 cured within the amount of time we talk about, you know,

1 this 15 days. So, I would want some wiggle room here,
2 because this says "shall give", and I know there's a JLCAR
3 issue with "may" or "shall", that type of thing, but I
4 would want to give us more flexibility than that. So, I
5 think, generally speaking, I concur with Wagner's, is it
6 Wagner Wood Products? Their sentiment here I agree with.

7 CHAIRMAN HONIGBERG: I think the counter
8 might be that you don't have to complete your suspension
9 proceeding. But, having it commenced, and being held over
10 the certificate-holder's head is not necessarily a bad
11 thing. They may have given you a dynamite cure plan.
12 But, if they slow -- if they slow-walk its implementation,
13 you may not be any better off. So, if you have the
14 suspension proceeding pending, you might be able to act
15 more quickly, in the event that the applicant -- or, that
16 the certificate-holder isn't moving as quickly as he or
17 she should.

18 Do the attorneys have any thoughts on
19 the debate Commissioner Scott and I just had?

20 MR. WIESNER: This does track the
21 statute very closely. And, I think I would tend to agree
22 that this does not prevent the certificate-holder from
23 attempting to cure, either pursuant to some agreement with
24 the SEC administrator, for example, or on its own, any

1 violation prior to the time the suspension action would
2 proceed.

3 CHAIRMAN HONIGBERG: And, so, your
4 thought is to leave this section in? Question mark.

5 MR. WIESNER: If the question is, I
6 mean, I gather that Mr. Wagner is proposing that there be
7 sort of a "safe harbor" here. Where there would be a
8 suspension of any action to suspend the certificate, if
9 there were a cure plan in place. And, I guess that I'm --

10 CHAIRMAN HONIGBERG: Or, I think what
11 he's saying -- I'm sorry.

12 MR. WIESNER: What I was going to say
13 is, I'm not sure that's necessary.

14 CHAIRMAN HONIGBERG: I agree with you.
15 I don't think it's necessary. Commissioner Scott's
16 looking at you crosswise.

17 COMMISSIONER SCOTT: I'm not sure I
18 understood what was just said, that last part.

19 MR. WIESNER: I think what I was getting
20 at was, you know, Mr. Wagner seems to be proposing a
21 standstill on behalf of the Committee, as opposed to
22 taking any action against the certificate-holder to
23 suspend the certificate, if there's a cure plan in place.
24 And, I'm not sure that's necessary, because I believe,

1 especially given the timing here, and I believe this is
2 what the Chairman was alluding to, a suspension action
3 could be initiated if, during that time, the
4 certificate-holder is able to cure to the reasonable
5 satisfaction of the administrator or the Committee, then
6 that action could then be terminated. So, the effect
7 would be the same. There would be a cure period in
8 effect, without there being a special "safe harbor"
9 provision that provides for a cure plan to suspend, if you
10 will, the SEC's ability to take action against a
11 certificate-holder.

12 Does that help at all?

13 COMMISSIONER SCOTT: I think so. I
14 guess what I'm trying to, and, again, it may be a JLCAR
15 issue that they wouldn't want to see this, I like, rather
16 than "the Committee shall" -- where are we? I'm sorry.
17 "The Committee shall commence a proceeding to suspend the
18 certificate", you know, "may" or "may for good cause" or
19 something, I'm more comfortable with.

20 What I fear is, as you had mentioned,
21 hypothetically, the administrator and the
22 certificate-holder have an agreement that makes sense to
23 everybody, but yet we're forced to commence a proceeding,
24 and all the expense incurred and all the time on the state

1 side. So, again, I'm looking for ways not to tie our
2 hands either way.

3 CHAIRMAN HONIGBERG: I think, if we go
4 back to notes or transcript or whatever record there is of
5 the last time we discussed this topic, I think we just
6 repeated the discussion that took place another time.
7 And, I do believe that tracking the statute's where we
8 ended up.

9 MR. IACOPINO: The statute says "may".

10 CHAIRMAN HONIGBERG: But I think we had
11 a -- I think we had a JLCAR situation. Maybe we could say
12 "may", because that's what the statute says. But I think
13 by, well, really, what does the -- read the statute.

14 MR. IACOPINO: Section 12 of RSA 162-H
15 says, in pertinent part, "if, 15 days after receipt of the
16 order, the person has failed or neglected to terminate the
17 violation, the committee may suspend the person's
18 certificate. Except for emergencies, prior to any
19 suspension, the committee shall give written notice of its
20 consideration of suspension and of its reasons therefor
21 and shall provide opportunity for a prompt hearing."

22 CHAIRMAN HONIGBERG: Well, that's a
23 different "may" and "shall". That's "may suspend", and
24 "may suspend" is the result of a proceeding. The rule

1 says "shall commence a proceeding". So, we're not
2 actually talking about exactly the same step in the
3 process.

4 I'm comfortable with the language as it
5 is. I would not -- I would not change it. Applicants
6 are -- I mean, certificate-holders, if they come up with a
7 good cure plan, it won't go ahead. But this ability, and
8 the requirement to commence one, eliminates discretion,
9 arguments that there was an abuse of discretion. "If you
10 haven't cured, we'll commence. Come up with a good cure
11 plan, we'll see how it looks." That's my view of this.

12 COMMISSIONER SCOTT: So, help me out
13 with the last part of that, the cure plan. So, if they
14 have a cure plan, where does this language give us
15 discretion not to open the proceeding?

16 CHAIRMAN HONIGBERG: Oh, no. We would
17 commence the proceeding. It's just a question of whether
18 we finish it.

19 COMMISSIONER SCOTT: Okay. So, you're
20 suggesting, if there's a good cure, we would perhaps
21 suspend the proceeding?

22 CHAIRMAN HONIGBERG: Correct. And, it's
23 out there. And, if the cure plan isn't being followed, if
24 it isn't being completed fast enough, you say "we'll see

1 you in the hearing room in five days." Because then they
2 will have all the notice and all the process that you
3 need. You won't have to start a new process to deal with
4 the failure to fulfill the cure plan.

5 How am I doing here? People agree with
6 that?

7 COMMISSIONER SCOTT: And, what's
8 involved in our view of "commencing a proceeding to
9 suspend"? What would be involved in that?

10 MR. IACOPINO: I'm sorry, I missed the
11 question.

12 COMMISSIONER SCOTT: Thanks. I'm sorry.
13 For us to commence, to follow this rule, if we put it in
14 place, and we commence a proceeding to suspend the
15 certificate, what does that involve?

16 MR. IACOPINO: I believe that would go
17 down to Subsection (d) of the rule. "If the person
18 holding the certificate has failed or neglected to
19 terminate a violation within 15 days after the receipt...
20 the Committee shall commence a proceeding." And, that's
21 when you would have to give them notice.

22 COMMISSIONER SCOTT: Right. So, I'm
23 sorry, I wasn't clear. What I was trying to get at is
24 what are the -- mechanically, what would be required? The

1 reason why I'm asking, I'm trying to understand what the
2 burden would be.

3 MR. IACOPINO: I think, at that point,
4 the Committee would issue a notice of an adjudicative
5 proceeding on the violation to the applicant -- or, at
6 this -- well, it could be the certificate-holder.

7 COMMISSIONER SCOTT: Understood.

8 MR. IACOPINO: Probably no longer an
9 "applicant".

10 CHAIRMAN HONIGBERG: I mean, they have
11 already been -- under this, they have already been told
12 "You have a violation. You need to fix it." And, if they
13 haven't done it within 15 days, they get another notice
14 that says "we're commencing a proceeding to suspend your
15 certificate, based on your failure or neglect to terminate
16 the violation we told you about 15 days ago."

17 MR. IACOPINO: And, Section (f), further
18 down, also says that you must "provide 14 days notice
19 prior" -- "except in an emergency, 14 days prior written
20 notice of the hearing, to the holder of the certificate
21 and the complainant, if any."

22 COMMISSIONER SCOTT: Okay. So, more
23 specifically, and I think I'm okay with it as is, I guess,
24 is, so, a "proceeding" doesn't mean we actually have to

1 hold a hearing. A "proceeding" could we issue an order of
2 notice saying "we're starting this process." Is that
3 right?

4 MR. IACOPINO: You could bring them in
5 on that notice, and they may come in here with the plan
6 that the Wagner folks like, and you might say "okay, we're
7 going to let you, you know, do that, and follow through on
8 it." If they do it, they do it. If they don't, you
9 reschedule a hearing and you take whatever action you deem
10 appropriate.

11 CHAIRMAN HONIGBERG: But "commencing a
12 proceeding" doesn't mean "opening a public hearing on a
13 suspension". It means "sending them a document that says
14 "we're hereby commencing a proceeding to suspend your
15 certificate"."

16 MR. IACOPINO: Yes.

17 CHAIRMAN HONIGBERG: Right? Okay.

18 COMMISSIONER SCOTT: If that's the case,
19 I'm fine with it.

20 CHAIRMAN HONIGBERG: Any other thoughts
21 or comments on this?

22 (No verbal response)

23 CHAIRMAN HONIGBERG: No. All right.

24 Let's move on.

1 We're back in Definition land. 102.08,
2 "Best Practical Measures".

3 (Short pause for members to review
4 comments provided.)

5 CHAIRMAN HONIGBERG: I see a few issues
6 in this set of comments. I have a question. In what
7 context is the phrase "best practical measures" used in
8 our proposed rules?

9 MR. WIESNER: It's used in various
10 places throughout the -- throughout the rules, to cover
11 the concept of the best available means of mitigating what
12 would otherwise be unreasonable adverse effects.

13 CHAIRMAN HONIGBERG: So, the Various
14 Energy Companies' proposal to limit its application to
15 wind energy systems would require taking it out of a
16 number of places where it's currently proposed to be used?

17 MR. WIESNER: That's correct.

18 CHAIRMAN HONIGBERG: Fine.

19 MR. WIESNER: And, where it appears in
20 the statute, is again in Section 10-a, which is the
21 rulemaking direction from the Legislature to the Committee
22 to adopt wind energy facility siting criteria rules.

23 CHAIRMAN HONIGBERG: All right. I'm in
24 the same place I was with respect to the other question we

1 just answered along the same lines. That, if this is a
2 sensible phrase, and we can agree on its meaning, I don't
3 see any reason why it wouldn't also apply to other
4 considerations within our rules. Do people agree with
5 that?

6 COMMISSIONER SCOTT: I concur. And,
7 again, to the extent that we put "cumulative impacts" more
8 globally, I think we need to do all of one or all the
9 other, I don't think we can say we're barred from one and
10 not the other in this section.

11 CHAIRMAN HONIGBERG: Well, it wouldn't
12 necessarily be because we couldn't, it's just a question
13 of "whether we should?" I think we agree that we're
14 not -- we're not precluded from doing it. I think we're
15 not precluded, and I affirmatively think we should.

16 COMMISSIONER SCOTT: I concur.

17 CHAIRMAN HONIGBERG: All right. I see
18 nodding heads. Good.

19 The other or second issue I see lurking
20 in these is that our proposal, as well as the AMC and
21 Audubon comments, both contain "economically feasible" as
22 part of the definition for "best practical measures". The
23 two other specific language proposals remove the
24 "economically feasible" concept, and largely go with

1 "technologically feasible" in one instance, or remove
2 "feasibility" entirely in the other. That's the other
3 issue I see -- or, the second issue I see in these, and
4 there's a few others, but that's a big one, I think.

5 COMMISSIONER SCOTT: Mr. Chair?

6 CHAIRMAN HONIGBERG: Commissioner Scott.

7 COMMISSIONER SCOTT: I do not support
8 removing the word "economically" from the definition.

9 COMMISSIONER ROSE: I would concur with
10 that.

11 CHAIRMAN HONIGBERG: Does anybody want
12 to advocate for removing "economic feasibility"?

13 (No verbal response)

14 CHAIRMAN HONIGBERG: No, I didn't think
15 so. All right.

16 DIRECTOR MUZZEY: Chairman?

17 CHAIRMAN HONIGBERG: Yes. I'm sorry.
18 Director Muzzey.

19 DIRECTOR MUZZEY: My question about
20 including it is, though, who defines whether or not it's
21 "economically feasible"? Is it the Committee? Is it the
22 applicant? Is it the intervenors?

23 CHAIRMAN HONIGBERG: I'm guessing that
24 there might be a fight about that.

1 DIRECTOR MUZZEY: I think so, too.

2 CHAIRMAN HONIGBERG: But that doesn't
3 mean it's not an appropriate consideration. I mean, I
4 think you would have experts who disagree about what's
5 economically feasible in a particular scenario. But I
6 don't think you want to eliminate the economics of a
7 proposed action from consideration of whether it's the
8 right thing to do.

9 DIRECTOR MUZZEY: Okay. That makes
10 sense. Thank you.

11 CHAIRMAN HONIGBERG: What about some of
12 the other suggestions here? From AMC and the Audubon,
13 what about other parts of their suggestion? Director
14 Muzzey.

15 DIRECTOR MUZZEY: I think the
16 Audubon/AMC definition is the most expansive. And, a
17 couple of the ideas that it incorporates that I think may
18 be helpful moving into the future are the ideas of both
19 "on-site and off-site methods" of mitigation, which we
20 have seen come into play with these types of facilities.
21 As well as the recognition that these mitigation measures
22 can happen in the siting, the design, the construction,
23 and also the operation of the facility. I think those are
24 good concepts to include in the definition as well.

1 CHAIRMAN HONIGBERG: Other thoughts?
2 Agree? Because I tend to agree with that. Others want to
3 weigh in?

4 (No verbal response)

5 CHAIRMAN HONIGBERG: Doesn't look like
6 it. Do people agree that we should incorporate that those
7 parts of the AMC/Audubon proposal, and there's other
8 sections that Director Muzzey didn't read from that that I
9 would have concerns about, but she didn't get there, so --
10 I think there's agreement on that. And, Director Muzzey,
11 you did not read the part that says "that control or
12 reduce to the lowest practical level known or anticipated
13 adverse impacts of the facility", that's the part that I
14 would have a problem with. You?

15 DIRECTOR MUZZEY: I don't know the
16 meaning of the "lowest practical level known". And, I'm
17 unfamiliar with that. It's not something that we use in
18 the historical field. We generally just seek to mitigate
19 adverse impacts. And, I'm just unfamiliar with how to
20 determine the "lowest practical level known", in all of
21 the areas that the SEC considers.

22 CHAIRMAN HONIGBERG: Yes. I'm
23 comfortable with the language that we proposed, the
24 "avoid, minimize, or mitigate relevant facility impacts",

1 as long as it -- but incorporating the "siting, design,
2 construction and operation" concept that they -- and "on-
3 and off-site" as well. So, I think combining their
4 definition with ours works for me.

5 COMMISSIONER SCOTT: I concur.

6 CHAIRMAN HONIGBERG: Any other thoughts?

7 (No verbal response)

8 CHAIRMAN HONIGBERG: Seeing none.

9 MR. WIESNER: If I can just jump in? I
10 just want to point out, I think that this proposed
11 language from the AMC and Audubon may best be read in such
12 a way that the "lowest practical level" applies to the
13 known or anticipated adverse impacts of the facility. So,
14 it still would require a finding that the proposed best
15 practical measures control or reduce to the lowest
16 practical level. But the "known" is a reference not to
17 the "practical level", but to --

18 DIRECTOR MUZZEY: Oh.

19 MR. WIESNER: -- "adverse impacts of the
20 facility". I'm not sure if that helps, but it is a
21 clarifying point perhaps.

22 CHAIRMAN HONIGBERG: I guess I'm not
23 understanding the clarification.

24 MR. WIESNER: In other words, the "best

1 practical measures" would have to be demonstrated to
2 "control or reduce known or anticipated adverse impacts of
3 the facility to the lowest practical level". So, it's not
4 the "lowest practical level known", it's the "lowest
5 practical level". I'm not sure there's a distinction
6 there.

7 CHAIRMAN HONIGBERG: Oh, oh, oh, oh.

8 DIRECTOR MUZZEY: Yes.

9 CHAIRMAN HONIGBERG: I see.

10 MR. WIESNER: It still seems to me that
11 that would be an issue that would be actively litigated
12 through expert testimony, and perhaps without
13 well-developed precedent to rely on.

14 CHAIRMAN HONIGBERG: Hang on. Just so I
15 understand the intended meaning, I've placed in my mind a
16 comma after the word "control", and after the word
17 "level".

18 MR. WIESNER: I think --

19 DIRECTOR MUZZEY: I'd place the comma
20 after "reduce".

21 CHAIRMAN HONIGBERG: Okay.

22 DIRECTOR MUZZEY: As opposed to
23 "control".

24 CHAIRMAN HONIGBERG: Okay. Okay.

1 "Control or reduce".

2 MR. WIESNER: Yes. I would say "that
3 control or reduce, to the lowest practical level, known or
4 anticipated".

5 CHAIRMAN HONIGBERG: Okay. All right.

6 MR. WIESNER: That's one way to conceive
7 of it.

8 CHAIRMAN HONIGBERG: All right. I still
9 don't think I agree, but at least I understand it better
10 now.

11 Yes, Commissioner Scott.

12 COMMISSIONER SCOTT: If this is --
13 hopefully, this isn't too hard a question to answer
14 quickly is, to me, that modifier at the end that we're
15 discussing really has to do with how you would use the
16 words "best practical measures" within the rule. Can you
17 point me in the rule where we talk about "best practical
18 measures"?

19 MR. WIESNER: I mean, there are any
20 number of places where it appears. Again, it sort of is a
21 stand-in for the concept of "mitigating unreasonable
22 adverse effects" -- or, I should say, "mitigating
23 potential adverse effects to the point where they would
24 not be found unreasonable".

1 So, in other words, this is a defined
2 term that covers the concept in numerous places within the
3 proposed rules the concept of the mitigation, to avoid,
4 eliminate or reduce potential adverse effects of the
5 proposed facility.

6 DIRECTOR MUZZEY: It's also used in the
7 section of application requirements. So, if the applicant
8 has best practical measures in place, those have to be
9 included within the application.

10 COMMISSIONER SCOTT: Thank you.

11 MR. IACOPINO: Commissioner Scott,
12 you'll find that on Page 8, Site 301.05, I don't know what
13 subsection it is, but it's number (9). You'll find it on
14 Page 14 [Page 8?], in "Effect on Historic Sites". You'll
15 find it on Page 11, with respect to "ice throw". Find it
16 on Page 15, with respect to "aesthetics". The phrase is
17 used throughout, in both information that's necessary to
18 go into the application and considerations that the
19 Committee has to make.

20 The next one that I have is on Page 16,
21 with respect -- and I just lost it, I'm sorry -- with
22 respect to "natural environment". Page 17, with respect
23 to "adverse effects on terrestrial and aquatic significant
24 habitat resources". Page 18, with respect to "cumulative

1 impacts of wind energy systems". And, that's the last one
2 I could find.

3 COMMISSIONER SCOTT: So, the reason why
4 I asked that is, and I'll take, for instance, I'm on Page
5 16, "best practical measures undertaken or planned to
6 avoid, minimize, or mitigate potential adverse effects",
7 *etcetera, etcetera*. In my view, though, all the modifiers
8 that are trying to be put in by the second part of this
9 definition are in where we plug those words in the rule.
10 So, I'm not sure of the added value, I guess. I suppose
11 the "lowest practical level" is the value added. But I'm
12 not sure it's needed.

13 DIRECTOR MUZZEY: Is that modifier been
14 suggested because an applicant could suggest "well, we
15 have this mitigation in place to do X and Y", and then
16 perhaps an intervenor would argue "but it's possible for
17 you to do X, Y, and Z, to create the lowest practical
18 level of adverse effect". And, so, it's -- to me, it's a
19 question of "how much mitigation?"

20 COMMISSIONER SCOTT: And, I think we're
21 there either way. Because, in all the contexts I'm
22 reading it as Attorney Iacopino laid out, is things we
23 should consider as a Committee. So, I think that debate
24 happens in those considerations anyways. So, I'm not sure

1 I -- I don't support that additional language in the
2 definition, is what I'm saying.

3 CHAIRMAN HONIGBERG: So, you would just
4 leave it as "available, effective, economically feasible
5 on-site or off-site", and could apply "during siting,
6 design, construction or operation"? Am I reading that
7 right?

8 COMMISSIONER SCOTT: Correct.

9 DIRECTOR MUZZEY: Wouldn't you also need
10 the words "that control or reduce anticipated adverse
11 impacts", just so say what you're mitigating?

12 CHAIRMAN HONIGBERG: I don't have a
13 problem with having it in there. I think Commissioner
14 Scott's concern is that that language is repeated pretty
15 much every time it gets used.

16 I have to kill our quorum for about two
17 minutes. I will be right back.

18 (Short pause.)

19 CHAIRMAN HONIGBERG: Sorry about that.
20 So, I would ask if the definition can survive without the
21 language at the end? Does it need the language at the end
22 to make sense?

23 MR. WIESNER: The language that
24 currently appears at the end of the definition?

1 CHAIRMAN HONIGBERG: Yes. The reference
2 to "demonstrated to effectively avoid, minimize, or
3 mitigate relevant facility impacts". I think that's the
4 concern that Commissioner Scott's articulating.

5 MR. WIESNER: A potential redundancy
6 between words included in this definition --

7 CHAIRMAN HONIGBERG: And then words that
8 are also included where the phrase is used. I think we
9 need to be real careful.

10 MR. WIESNER: Right.

11 CHAIRMAN HONIGBERG: I think the concern
12 I have is that, if we use it -- if we don't have the
13 language somewhere, and also don't include it in the
14 definition, we've got a problem. If it appears in both
15 places, it's not the end of the world. It's just -- you
16 just ignore the redundant language.

17 MR. WIESNER: So, if I can just clarify.
18 Is the proposal then to basically accept the AMC language,
19 but to end it after "operation of energy facility."?

20 CHAIRMAN HONIGBERG: That might well be
21 what Commissioner Scott had, but I would ask him to
22 confirm that.

23 MR. WIESNER: Right. On the assumption
24 that everywhere where you see "best practical measures",

1 it's coupled with language that refers to "avoidance,
2 mitigation, reduction", *etcetera*?

3 COMMISSIONER SCOTT: That would be
4 correct.

5 DIRECTOR MUZZEY: I have always heard
6 that definitions are the most important parts of
7 rulemaking, because they set the stage for everything
8 else. And, I think a key aspect of a mitigation measure
9 is that its purpose is to effectively "avoid, minimize, or
10 mitigate impacts". And, to remove that from the
11 definition section in particular, I think would -- would
12 be an unwise idea.

13 MR. WIESNER: I mean, an alternative
14 approach would be to remove redundant language where it
15 appears otherwise in the rules, and just let the
16 definition carry that concept.

17 CHAIRMAN HONIGBERG: I think that's
18 the -- that's what we should look at doing. I don't think
19 we should look at doing it this second. I think we should
20 take a look at all the usages of it, and see how it fits,
21 how it would work, without that language where it's
22 placed, and see if it would make any sense. You don't
23 want to always make people go back to the definitions to
24 understand what you're talking about. Although, if

1 necessary, it's necessary.

2 So, that's a task I would -- I would ask
3 that we do offline and take a look at that language while
4 not everyone is here, and we'll just make sure that it
5 works. Is that okay?

6 DIRECTOR MUZZEY: So, just to be very
7 clear, what we're -- what we've all agreed to already,
8 though, to remove from this AMC/New Hampshire Audubon
9 definition, is the phrase of "to the lowest practical
10 level"?

11 CHAIRMAN HONIGBERG: "That control or
12 reduce to the lowest practical level known or anticipated
13 adverse impacts of the facility". I think, if we're using
14 a phrase there, it's going to be the phrase that we
15 originally had. I think that's what we agreed. Could be
16 wrong. Been wrong before.

17 DIRECTOR MUZZEY: From my perspective,
18 again, and it's getting late in the afternoon, I think, if
19 you're talking -- if you're defining "best practical
20 measures" to mitigate something, you have to include
21 something that references the anticipated adverse impacts.
22 My only concern had been the phrase "to the lowest
23 practical level", because that seemed to indicate a
24 quantity of mitigation that we might not all agree on.

1 CHAIRMAN HONIGBERG: Well, the language
2 that we proposed said "have been demonstrated to
3 effectively avoid, minimize, or mitigate relevant facility
4 impacts."

5 DIRECTOR MUZZEY: And, I'm fine with
6 that language.

7 CHAIRMAN HONIGBERG: Okay.

8 DIRECTOR MUZZEY: Okay. Sorry.

9 CHAIRMAN HONIGBERG: So, just --

10 MS. WEATHERSBY: I think it now reads
11 ""best practical measures" means available, effective and
12 economically feasible on-site or off-site methods or
13 technologies used during the siting, design, construction
14 and operation of an energy facility to effectively avoid,
15 minimize, or mitigate relevant facility impacts."

16 CHAIRMAN HONIGBERG: I agree.

17 DIRECTOR MUZZEY: Uh-huh.

18 CHAIRMAN HONIGBERG: And, what we'll
19 look at offline is whether that, the latter part of that
20 definition is repeated so often in the text of the rules
21 that we should remove it in one place or the other. And,
22 we'll make it -- we'll try to make it so it doesn't lose
23 its meaning.

24 Let's talk about "Adaptive Management"

1 and see how we go. I don't think there's a lot more
2 energy at this end of the room. So, I don't know how much
3 more we're going to be able to do. But let's take a look
4 at "Adaptive Management".

5 (Short pause for members to review
6 comments provided.)

7 CHAIRMAN HONIGBERG: Do people have any
8 thoughts or comments on the need for the definition, which
9 is one of the suggestions, or its usage or the concept's
10 usage later in the document? Mr. Oldenburg.

11 MR. OLDENBURG: Can I get an example of
12 where we would use "adaptive management"?

13 MR. IACOPINO: It's actually on Page 17
14 of the Initial Proposal of the 300 rules. It's in -- I
15 think it's Rule 301.14, I think that's the only place that
16 it's used.

17 CHAIRMAN HONIGBERG: It's at the top of
18 Page 17 of the black-lined version of the rules.

19 MR. IACOPINO: And, it's specifically
20 used in the context of "determining whether construction
21 and operation of the facility will have an unreasonable
22 adverse effect on the natural environment, wildlife
23 species, rare plants, natural communities and other
24 exemplary natural" -- "other exemplary natural

1 communities". The rule goes on to say "the committee
2 shall consider", and you get to subsection (7), and it's
3 "Whether conditions should be included in the certificate
4 for post-construction monitoring and reporting and for
5 adaptive management to address potential adverse effects
6 that cannot reliably be predicted at the time of
7 application."

8 CHAIRMAN HONIGBERG: So, are you looking
9 for a substantive example of what types of things
10 constitute "adaptive management"?

11 MR. OLDENBURG: Yes. Yes.

12 MR. WIESNER: I'm no expert, but I think
13 my sense is there might be a situation where a sensitive
14 species is present in the area, at a particular level, no
15 conditions are imposed in the Certificate with respect to
16 management of that species, but adaptive management is
17 required. Which is sort of setting a target, and then
18 letting the applicant and the administrator, for example,
19 work out a plan in real -- as time goes on, in order to
20 preserve that species at the specified level.

21 So, it's more of an open-ended,
22 forward-looking approach to wildlife management, for
23 example, and perhaps other environmental concerns. And, I
24 think that's why there's a strong interest of

1 environmental organizations in seeing that preserved, and,
2 in fact, in the AMC requirements, making it a specific
3 basis for a finding of "no unreasonable adverse effects".

4 And, I think, based on the discussion we
5 had earlier, it would not be a requirement, but it would
6 be a consideration that the Committee would take into
7 account in appropriate circumstances. Again, this is
8 where you cannot necessarily predict what the full impact
9 of the proposed facility would be, but you know there's an
10 area of concern. And, so, you adopt adaptive management
11 practices, and there's not necessarily a hard-and-fast
12 definition of what that would entail in each particular
13 case. But, again, it's forward-looking, and it's sort of
14 evolutionary, if you will, with defined goals, and then
15 management practices adopted to achieve those goals over
16 time, given the changing and dynamic environment.

17 CHAIRMAN HONIGBERG: Attorney Iacopino,
18 was adaptive management part of the plans for, was it
19 Groton Wind and the pine marten?

20 DIRECTOR MUZZEY: That was Coos County.

21 CHAIRMAN HONIGBERG: Which one was it?

22 DIRECTOR MUZZEY: Coos County.

23 MR. IACOPINO: Right. It was Granite,
24 Granite Reliable.

1 CHAIRMAN HONIGBERG: Granite Reliable,
2 sorry. Granite Reliable.

3 MR. IACOPINO: I don't think that
4 they -- that wasn't their original plan, that wasn't part
5 of their original application. But, in the recent --

6 CHAIRMAN HONIGBERG: Right.

7 MR. IACOPINO: -- recent docket that we
8 had, where they wanted to widen the roads, they proposed
9 an adaptive management program.

10 Also, in the Antrim Wind facility, the
11 one that was denied, there was a proposal for an adaptive
12 management program in that. And, I think you will see
13 those more and more, because, just doing the
14 post-construction studies, you learn things, but there's
15 not really a requirement that you fix things. So, that an
16 adaptive management program, I think you'll see more and
17 more going forward. They're going to be the more popular
18 proposals coming in from the applicants.

19 So, another -- just another example that
20 was given by one of the experts in that Granite Reliable
21 of an adaptive -- of adaptive management on the ground
22 was, and he didn't recommend it, but it was the proposal
23 to keep the larger predators from the higher elevation is
24 use electric fences. He didn't recommend it. He said he

1 thought it would be foolish, but it was one example of a
2 type of adaptive management process.

3 CHAIRMAN HONIGBERG: Commissioner Scott.

4 COMMISSIONER SCOTT: I'm comfortable
5 with leaving both the definition and the consideration in,
6 what is it, 301.14(e)(7) as is. It doesn't -- that site
7 doesn't require us as a Committee, it just tells us to
8 look at whether that makes accepts. I don't see any harm
9 to that. And, I think it's something that should be, as
10 Attorney Iacopino mentions, that's a forward-looking
11 thing. I'm not sure why that's harmful to have that in
12 the rules.

13 CHAIRMAN HONIGBERG: And, there's a lot
14 of nodding heads. Now, I'm not sure if the nodding heads
15 are solely related to agreement or whether we're all just
16 exhausted at this point.

17 I think, at this point, we are going to
18 wrap things up for today. There's plenty of work still to
19 be done. The next time we could all get together is in
20 mid August.

21 Now, there is a chance that sometime
22 after July 22nd there will be a third PUC Commissioner.
23 If that happens, that may give us a little bit more
24 flexibility in creating a quorum for future meetings. So,

1 please check your e-mails. If you see a *doodle.com* poll
2 looking for dates, please respond quickly. And, we'll see
3 if we are able to meet again, or if we're going to need to
4 wait until August, when we do know we have a date.

5 So, is there anything else people want
6 to do or discuss at this moment?

7 (No verbal response)

8 CHAIRMAN HONIGBERG: No, I think people
9 want to adjourn. I would entertain a motion to adjourn.

10 COMMISSIONER SCOTT: So moved.

11 DIRECTOR MUZZEY: Second.

12 CHAIRMAN HONIGBERG: Any discussion?

13 (No verbal response)

14 CHAIRMAN HONIGBERG: Seeing none, all
15 those in favor say "aye"?

16 (Multiple members indicating "aye".)

17 CHAIRMAN HONIGBERG: Any opposed?

18 (No verbal response)

19 CHAIRMAN HONIGBERG: We are adjourned.

20 Thank you very much.

21 **(Whereupon the meeting was adjourned**
22 **at 4:36 p.m., and the meeting of the**
23 **SEC members to reconvene is scheduled**
24 **for August 18, 2015, at 9:00 a.m.)**